

EXHIBIT 7

KAZEROUNI LAW GROUP, APC
6069 South Fort Apache Road, Suite 100
Las Vegas, Nevada 89148

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Lee C. Kamimura,
individually and all
other similarly situated,
Plaintiff,

vs.

Case No: 2:16-cv-00783-
APG-CWH

Green Tree Services,
Defendant.

VIDEO DEPOSITION OF JOHN ULZHEIMER

February 8, 2018

1:19 p.m. EST

Veritext Atlanta

1075 Peachtree Street
Atlanta, Georgia

Reported By:

Valerie N. Almand,

RPR, CRR, CRC

Job No. 2808282

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7 PLAINTIFF'S

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9 Exhibit 1	Plaintiff's Third Amended	4
10	Notice of Taking Deposition of	
11	Defendant's Designated Expert	
12	John Ulzheimer	
13 Exhibit 2	TransUnion credit report (with	4
14	redactions)	
15 Exhibit 3	Expert Report of John	4
16	Ulhzheimer in instant case	
17 Exhibit 4	excerpt from Green Tree manual	4
18	re Legal Requirements, State &	
19	Federal Law - Fair Credit	
20	Reporting Act	
21	(GreenTree/Kamimura 000889-92)	

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22 Legal Video Specialist: Taylor Graves
23
24
25

(Plaintiff's Exhibit 1, Plaintiff's Exhibit 2, Plaintiff's Exhibit 3 and Plaintiff's Exhibit 4 marked)

THE VIDEOGRAPHER: We're now on the record. The time is 1:19 p.m. This will be the video deposition of Mr. John Ulzheimer. If counsel present on the phone would introduce themselves for the record and who they represent, please.

MR. KIND: This is Michael Kind on behalf of the plaintiff.

MS. KAMKA: This is Mary Kate Kamka and
Don Cram on behalf of defendant Ditech Financial.

THE VIDEOGRAPHER: Thank you, Counsel.

And if Ms. Valerie Almand, our court reporter, would swear the witness today, we'll proceed.

JOHN ULZHEIMER,
having been duly sworn, was examined and testified
as follows:

EXAMINATION

BY MR. KIND:

Q. Good morning. Can you hear me well?

A. I can hear you fine. There's a little bit of a delay, but otherwise I can hear you fine.

1 Q. So, yes, I agree, there's a bit of a
2 delay. So in that case I'm going to try to do my
3 best to let you finish so I'm sure that you're
4 done, I'll ask the question, and I hope that you
5 do the same. Is that all right?

6 A. Sure, that's fine, thank you.

7 Q. Is there any reason why you would not be
8 able to give your best testimony today?

9 A. No, sir.

10 Q. If you don't understand any of my
11 questions, I'd ask that you let me know and I'll
12 do my best to rephrase it. Is that fair?

13 A. It is, yes.

14 Q. Also, I know that you've given your
15 deposition a bunch of times and I've read through
16 some of the transcripts, so I'm not -- how many
17 times, approximately, have you had a deposition
18 taken?

19 A. I would say in the neighborhood of 50 to
20 60 times, give or take.

21 Q. Also, I think that your report lays out
22 your experience and, of course, your record, so we
23 won't necessarily go through a lot of your
24 background. But for this particular case, could
25 you tell me when you were first retained as an

1 expert.

2 A. Sure. I believe it was sometime either
3 in October or perhaps even early November, around
4 that timeframe, of last year.

5 Q. And then your report is from -- was much
6 more recent, right?

7 A. Looks like November 13th of last year.

8 Q. Oh, okay. So you submitted your report
9 shortly after you were retained?

10 A. That's correct, yes.

11 Q. Did you receive an initial retainer in
12 this case?

13 A. Yes, sir, I did.

14 Q. How much was that?

15 A. \$7500.

16 Q. What was your understanding of the
17 assignment when you first were retained?

18 A. My understanding of the scope of work was
19 to review the materials provided to me by counsel,
20 including the credit report information and the
21 expert report of Mr. Evan Hendricks, and offer any
22 opinions that I saw fit either in rebuttal or that
23 I felt that the facts supported.

24 Q. And then besides the documents listed in
25 your report, and you have it -- you know, we won't

1 pull it out for right now. But other than the
2 documents listed in the report are there any other
3 documents that you were provided in connection
4 with this case?

5 A. Subsequent to the submission of my report
6 I obviously received a couple of notices of
7 deposition. But other than that, that's the
8 totality of the documents that I received.

9 Q. Okay. You know what, let's mark -- well,
10 you should have there Exhibit Number 1, which is
11 the most recent notice of this deposition.

12 A. Okay.

13 Q. Do you have it there?

14 A. Yes, sir, I do.

15 Q. Okay. When did you receive that
16 document?

17 A. I got this I think a couple of days ago.
18 It would have been two days ago last night.

19 Q. And when you were originally provided
20 documents were they given by the attorneys in this
21 case?

22 A. Yes, sir, they were.

23 Q. Were they sent by email?

24 A. I don't recall how I received them, but
25 they were sent electronically in some way.

1 Q. Either today or this morning or yesterday
2 were you asked to search for emails between you
3 and your attorneys?

4 A. No. That was part of the deposition
5 document request, so I did it in response to the
6 request, not because anybody asked me to do it.

7 Q. Okay. So did you look to see if there
8 was emails with documents that were sent by email?

9 A. There were not any documents attached to
10 any emails that I had received that I was able to
11 locate.

12 Q. If you had to guess how it was sent -- I
13 get that you don't remember -- was it Dropbox link
14 or something like that?

15 A. Yeah. Normally because of the size and
16 the volume of documents in these types of cases I
17 almost always ask that if it's possible to set up
18 some sort of FTP or Dropbox type of deal, just so
19 we're not sending massive files back and forth
20 that may not actually find their intended
21 recipient.

22 Q. And when you were originally retained do
23 you remember if it was a phone call or an email?

24 A. I do not recall if it was a phone call or
25 an email.

1 Q. Okay. How many times have you testified
2 on behalf of Ditech or Green Tree?

3 A. I believe this is either my second or
4 possibly third.

5 Q. And how many times have you been retained
6 by the attorneys on behalf of Ditech in this case?

7 A. I would say I think -- well, this is the
8 first time that Mr. Cram and I have worked
9 together, so that would be number one for he and
10 I. Mary Kate and I, I think this is possibly the
11 second time that we've worked together.

12 Q. Have you worked with other attorneys at
13 their firm?

14 A. I have, yes.

15 Q. Approximately how many times?

16 A. I would say about a dozen or so times
17 over the years.

18 Q. Okay. Now, obviously -- well, let me ask
19 you: You identify as a credit expert, right?

20 A. That's correct.

21 Q. Would you say you're also a credit score
22 expert?

23 A. Yes, I would.

24 Q. A credit reporting expert?

25 A. Yes.

1 Q. Are you -- do you consider yourself being
2 an expert on privacy issues?

3 A. Not -- not to the extent where I would
4 hold myself out to be an expert witness level of
5 expert on that topic.

6 Q. But what's the qualification, that you
7 know enough about privacy as it relates to credit
8 reporting?

9 MS. KAMKA: I would just -- sorry --
10 object to form and the vague nature of the word
11 privacy being used.

12 Go ahead, John, you can continue.

13 A. Yeah, I use the court's definition or
14 what they consider to be kind of the
15 qualifications as an expert. And I don't hold
16 myself as a privacy expert. My expertise is very
17 specific to credit reporting and credit scoring
18 and the issues surrounding consumer credit.

19 BY MR. KIND:

20 Q. How about bankruptcy? Are you a
21 bankruptcy expert?

22 MS. KAMKA: Again, I just object to form.

23 A. I would say I probably know more about
24 bankruptcy than the layman. I certainly don't
25 know as much about bankruptcy as, say, for

1 example, a bankruptcy attorney. But, you know, I
2 don't hold myself as a bankruptcy expert witness,
3 per se.

4 BY MR. KIND:

5 Q. What do you mean, per se?

6 A. Meaning that I don't own any websites
7 where I am advertising myself as a bankruptcy
8 expert witness or I don't -- I don't know that
9 I've ever been retained in my time being an expert
10 specifically on the issues surrounding the nature
11 of the filing of a certain type of a bankruptcy,
12 for example. Certainly the impact of a bankruptcy
13 on credit, yes. But that's kind of the extent of
14 it.

15 Q. Okay. And when you say the effect of a
16 bankruptcy on credit, could you talk more about
17 that.

18 MS. KAMKA: Mike, I don't mean to
19 interrupt. I'm going to make an objection here
20 that hopefully will limit my objections in the
21 future.

22 When we use the term bankruptcy in this
23 deposition I'd ask that you clarify if you're
24 talking about a particular type of bankruptcy or
25 just bankruptcy in general.

1 You can answer, John.

2 THE WITNESS: Okay.

3 A. Bankruptcy as far as the impact on a
4 credit report, how it gets to a consumer's credit
5 report, how long it remains on a consumer's credit
6 report, how debts are reported if they are subject
7 to a bankruptcy, the impact of bankruptcy on a
8 consumer's credit score, the amount of time and
9 the extent that it impacts a consumer's credit
10 score, and generally what a lender believes or
11 what a lender feels when they see a consumer who
12 has a bankruptcy on his or her credit report.

13 BY MR. KIND:

14 Q. As far as the effect of bankruptcy
15 legally on a debt, you would not hold yourself to
16 be an expert on that issue, correct?

17 A. I don't know. I think -- I'm not sure I
18 would go that far. I mean, I certainly understand
19 how a bankruptcy affects the collectability of a
20 debt or protection from the creditor when the
21 consumer does file bankruptcy and includes a debt
22 in bankruptcy.

23 Q. Yeah, but the question is would you
24 consider yourself an expert on that issue. I
25 understand you're talking generally. But an

1 expert, as you know, you know, gets into the
2 nuances, knows all the specifics, et cetera.

3 A. Yeah, no, I --

4 Q. So the --

5 A. Go ahead. I wouldn't hold myself out as
6 being an expert on all of the nuances of consumer
7 bankruptcies.

8 Q. Okay. So you should have there Exhibit
9 Number 2 premarked, and that would be the Exhibit
10 14 from Hardwick's deposition. Let me know if you
11 have that.

12 A. I do have it. Yes, sir, I've got it.

13 Q. Okay.

14 MS. KAMKA: Sorry, Michael, did you say
15 Exhibit 12 from Hardwick's deposition?

16 MR. KIND: 14.

17 MS. KAMKA: 14, okay, thanks.

18 BY MR. KIND:

19 Q. All right. So have you seen this
20 document before?

21 A. Yes, sir.

22 Q. All right. And --

23 A. Well, actually, just in the spirit of
24 hyper-accuracy, I've seen this document but I
25 haven't seen it with all of these redactions.

1 I've seen it without the redactions.

2 Q. Fair enough. So this is Mr. Kamimura's
3 TransUnion credit report from April 2015, right?

4 A. Yes, sir, it is.

5 Q. All right. So we're going to go to page
6 of 7.

7 A. Okay, I've got it.

8 Q. All right. So over there you have a list
9 of credit inquiries. Can you talk a little bit
10 about what these inquiries are.

11 A. So an inquiry in general is a record of
12 access into a consumer's credit report by some
13 party, and kind of trickling down from there there
14 are a variety of different types of inquiries.

15 Q. Okay. Now, you said that this is an
16 inquiry into credit report. What do you mean by
17 credit report?

18 A. A credit report meaning the report
19 compiled by any of the three generally recognized
20 national consumer credit reporting agencies:
21 Equifax, Experian, and TransUnion. So the inquiry
22 is a record of access into someone's credit
23 report.

24 Q. Would any -- is there a way that someone
25 could access just a credit score and not credit

1 report?

2 A. Yes.

3 Q. Would that show up on the inquiries?

4 A. It would, yes.

5 Q. Okay. And how would you know whether it
6 was the credit score or credit report?

7 A. By looking at the credit report you
8 wouldn't have any idea. You would just know that
9 that's -- on some date some party accessed the
10 consumer's credit report. Whether they took
11 possession of just the report or the entire credit
12 report is not listed on this credit report in the
13 inquiries section.

14 Q. Would that be for promotional inquiries
15 and also account review?

16 A. Yes. It would be for all types of
17 inquiries. There's no context as far as what the
18 deliverable was when you're looking at someone's
19 credit report like what we have here in Exhibit 2.

20 Q. Based on the documents that you reviewed,
21 the inquiries listed here on this exhibit, are
22 these consumer reports?

23 MS. KAMKA: Object to form.

24 A. Exhibit 2 is formally referred to as a
25 consumer disclosure.

1 BY MR. KIND:

2 Q. What I'm referring to is the inquiries on
3 page 6. Are those inquiries off consumer reports?

4 A. Yes, they're inquiries into this
5 particular consumer's TransUnion consumer reports
6 as housed by TransUnion, that's right.

7 Q. Okay. Also -- and you've read through
8 Mr. Hardwick's deposition transcript, right?

9 A. Yes, I did -- I read through it as part
10 of my crafting of my report back in November,
11 that's right.

12 Q. So in his deposition -- and correct me if
13 I'm wrong, I'll just represent how I remember
14 it -- he explained that under the promotional
15 inquiries, those were actually also account review
16 inquiries, and he wasn't sure why they showed up
17 as promotional inquiries. Do you remember seeing
18 that?

19 A. I don't recall that specificity, just
20 simply because it's been several months since I
21 read it.

22 Q. Okay, fair enough. Do you know -- have
23 you seen before that a user might pull a consumer
24 report for account review purposes, but it shows
25 up on a consumer disclosure as a promotional

1 inquiry?

2 A. No, they're two very different things.
3 So I've never seen an example of where one is
4 being mislabeled as being promotional or account
5 review like that.

6 Q. Well, if my representation of
7 Mr. Hardwick's testimony is correct, do you have
8 any reason to believe that that's not what
9 happened in this particular case?

10 MS. KAMKA: I object that it calls for
11 speculation.

12 A. Yeah, I would be -- I don't know -- I
13 don't know Mr. Hardwick. I would suggest that I
14 don't know that he's -- I mean, it seems like
15 TransUnion would be the best party to answer that
16 question as to what type of access into their
17 database occurred on those dates and why they're
18 choosing to display those as promotional versus
19 account review if they really were, in fact,
20 account review.

21 Q. Okay. But you've never seen this before
22 where it's listed as one but the user is saying
23 that it was another?

24 A. No, I've never heard of somebody
25 suggesting that the disclosure is misrepresenting

1 the type of the inquiry.

2 Q. Okay. Could you tell me what a
3 subscriber agreement is?

4 A. Can you repeat that? I'm sorry.

5 Q. Sure. Could you tell me what a
6 subscriber agreement is?

7 A. Well, in my world a subscriber agreement
8 indicates the agreement between a user of credit
9 reports and the credit reporting agency.

10 Q. Have you ever come across a case where a
11 user and the credit reporting agency do not have a
12 subscriber agreement?

13 A. That's not usually the nature of my
14 expert work, but I know when I was in Equifax
15 nobody ever got access into our database unless
16 they had a subscriber agreement.

17 Q. Did you review Ditech's subscriber
18 agreement with TransUnion?

19 A. I don't believe I was provided with that
20 document, so no, I wouldn't have reviewed it.

21 Q. Have you seen other subscriber
22 agreements?

23 A. I have, yes. Not in this case, but yes,
24 I've seen subscriber agreements in my time, yes.

25 Q. Would you agree with me that subscriber

1 agreements all have in their warning about
2 permissible purpose in the FCRA?

3 MS. KAMKA: I'll just object to form and
4 the inclusion of all subscriber agreement.

5 A. The subscriber agreements that I've seen
6 did have language regarding permissible purpose
7 and the Fair Credit Reporting Act.

8 BY MR. KIND:

9 Q. Did you ever see in this case any
10 spreadsheets relating to the size of the potential
11 class in this case?

12 A. Did you say the size of the potential
13 class?

14 Q. Yes.

15 A. No, sir, I haven't seen anything like
16 that.

17 MS. KAMKA: I'll just object that that's
18 outside the scope of the examination today.

19 But go ahead, you can answer.

20 A. No, sir, I haven't seen anything like
21 that.

22 BY MR. KIND:

23 Q. Did you review or discuss the potential
24 size of the potential class in this case with
25 anybody?

1 MS. KAMKA: Same objection.

2 A. No, sir, I have not.

3 BY MR. KIND:

4 Q. Did you review any documents that relate
5 to how many people -- how many customers of Ditech
6 had a bankruptcy?

7 A. No, sir, I don't believe I saw anything
8 like that.

9 Q. Did you review any consumer reports that
10 Ditech received from TransUnion from an account
11 review inquiry?

12 MS. KAMKA: Object to form. I assume
13 you're asking only about plaintiffs. Correct me
14 if I'm wrong.

15 A. Yeah, I don't --

16 BY MR. KIND:

17 Q. I'm asking --

18 A. Sorry. I'm sorry, go ahead.

19 Q. Yeah, so it's the same question. Have
20 you seen any consumer reports that Ditech received
21 from TransUnion in response to an account review
22 inquiry?

23 A. No, sir. The only report that I have is
24 this one Exhibit 2.

25 Q. Have you ever seen an account review

1 inquiry consumer report?

2 A. Yes, sir, many times.

3 MS. KAMKA: Object to form.

4 A. Yes, many times.

5 BY MR. KIND:

6 Q. Have you ever seen one from -- received
7 by Ditech?

8 A. I don't believe that I have.

9 Q. Have you seen ones that were sent by
10 TransUnion?

11 A. I believe I have in other cases.

12 Q. And did those more than -- information
13 about more than one consumer?

14 A. Say that again, please.

15 MS. KAMKA: Object to form. Vague and
16 ambiguous.

17 A. I'm sorry, do you mind repeating --

18 BY MR. KIND:

19 Q. Yeah. Did those consumer reports that
20 were sent in response to an account review inquiry
21 ever include just one consumer?

22 A. Well, just for clarity, they all would
23 have been for one consumer, because most of my
24 work there is only one plaintiff. And so the
25 document production would only be for that one

1 particular consumer. But that would be the only
2 reason why it would only be for one consumer.

3 Q. Did it appear from the documents that
4 you're referring to that there were more -- let me
5 start this question again.

6 A. Okay.

7 Q. My question is: Account review inquiries
8 generally are batched inquiries, would you agree
9 with that?

10 A. That's correct, yes.

11 Q. Okay. So when you say you only saw from
12 one consumer, maybe the rest of it was redacted
13 out or just not given to you?

14 MS. KAMKA: Object on the grounds it
15 calls for speculation.

16 Go ahead, John.

17 A. Yeah, I don't recall why it would have --
18 I don't recall the exact scenarios in the other
19 cases. But, again, if you have Joe Smith as a
20 plaintiff you're not going to see Joe Smith and a
21 million other consumers' information in the
22 document production.

23 BY MR. KIND:

24 Q. Okay. But the account review inquiry
25 consumer reports generally have a lot of consumers

1 on one report.

2 A. So I think -- when you're saying a
3 report, a report is for one consumer, always. You
4 may be referring to the deliverable in the batch
5 where the deliverable could be millions of
6 consumers. Just make sure we're using the same
7 terminology.

8 When you say report, that's a report,
9 Exhibit 2, versus the batch deliverable which
10 could be 10 million consumers' reports. So just
11 make sure we're using the same terminology.

12 Q. I appreciate that clarification. So,
13 using that terminology, account review inquiries
14 are generally requested in batches of multiple
15 consumers' reports, and then the credit reporting
16 agency responds with multiple consumers' reports;
17 is that correct?

18 A. Yes, sir, that's correct.

19 Q. Okay. Have you ever had your testimony
20 excluded by any court?

21 A. Yes. I know there have been scenarios
22 where it was limited or I couldn't talk about
23 certain things, so it was almost, I guess, limited
24 to certain things.

25 And there was a lawsuit in, I want to say

1 it was West Virginia, where I wasn't allowed to
2 talk about credit repair, if I remember correctly.
3 But those are the only two that I can think of.

4 Q. Do you remember those case names?

5 A. The West Virginia case was Dougherty
6 versus Ocwen, and I don't recall the name of the
7 other one.

8 Q. But the other one was related to the
9 credit repair?

10 A. No. The Dougherty case was related to
11 credit repair.

12 Q. And what was the other one related to, if
13 you remember?

14 A. I don't remember. It's been many years,
15 and most of these aren't terribly memorable.

16 Q. In preparing your expert report -- and we
17 could take it out. So it's document -- it should
18 be Exhibit Number 3.

19 A. Okay. I've got it.

20 Q. And it's marked as Exhibit Number 3?

21 A. It is, yes, sir.

22 Q. Okay. So in preparing that report, did
23 you receive any assistance from anybody?

24 A. I did not.

25 Q. Did you receive any advice from anyone?

1 A. No, sir, I did not.

2 Q. Was there any information that you
3 received that you did not use in preparing this
4 report?

5 A. Probably. Give me a minute.

6 Q. I mean, the deposition transcripts for
7 the purposes of my work weren't terribly useful,
8 and so even -- the plaintiff's deed of trust, even
9 though it's nice to have it, the home equity
10 agreement and disclosure statements, again, nice
11 to have it, but it's not -- it wasn't -- it didn't
12 kind of go into the crafting of the report, other
13 than the documents reviewed section.

14 Q. Were there any opinions that you
15 considered but did not end up including in your
16 report?

17 A. No. No. Generally if I've got an
18 opinion I'll sink it in the report somewhere or
19 somewhere.

20 Q. Did anyone ask you to form an opinion in
21 this case that you didn't add into the report?

22 A. No.

23 Q. What do you think is the biggest weakness
24 of your opinions in your report?

25 A. Pardon? The biggest what?

1 Q. What do you think are the strongest
2 weaknesses of your opinions in your report?

3 MS. KAMKA: I object to form, vague and
4 ambiguous.

5 A. I don't know. I mean, clearly, you know,
6 I think with all of these you have two experts who
7 have opinions that are in direct contrast with
8 each other. So I guess at the end of the day
9 someone gets to decide which one they are going to
10 give more validity to.

11 So that's probably, you know, in my work,
12 anyways, that's usually the biggest challenge is
13 kind of the battle of the expert opinions, if you
14 will.

15 Q. Did you draft the report yourself?

16 A. I wrote the entire thing myself, that's
17 right.

18 Q. Okay. So let's dive into the opinions,
19 and we'll go straight to page number, let's see in
20 there -- page 12.

21 A. Okay.

22 MS. KAMKA: Sorry, Michael, did you say
23 page 12?

24 MR. KIND: Yeah, that's right.

25 THE WITNESS: Uh-oh. I just moved the

1 mouse. Did I screw something up?

2 MS. KAMKA: Hold on.

3 THE WITNESS: Hold on one second. I just
4 moved the mouse and it blanked out the screen.
5 Never mind. All right, thank you. Sorry about
6 that.

7 Okay, sorry about that.

8 MR. KIND: You're good?

9 THE WITNESS: Yeah, user error on my
10 part.

11 BY MR. KIND:

12 Q. Okay. Actually, I'd like to go back to
13 page 3, quick question on page 3.

14 A. All right.

15 Q. The first paragraph on page 3 talks about
16 presentations. Are those slide shows or some
17 other form of presentation?

18 A. When I was doing them at Equifax and FICO
19 they would have had some sort of visual
20 accompanying the presentation. They almost always
21 did either a visual or some form of a handout, if
22 you will.

23 I hate that, and so the presentations
24 that I've done subsequent to working in the
25 corporate world, I don't use any sort of

1 PowerPoint or any sort of slides. I just get up
2 there and talk.

3 Q. Do you happen to have any of the
4 presentations -- well, let me start that again.

5 In drafting this report did you rely on
6 any presentation visuals that you used back at
7 Equifax?

8 A. No.

9 Q. Okay. And then on -- we talked about it
10 a little before. Could you just explain the
11 difference between a soft inquiry and a hard
12 inquiry?

13 A. Sure. Sure. So generally speaking, a
14 hard inquiry is the result of the consumer overtly
15 applying for something. So like, for example, if
16 I go to a bank this afternoon and I apply for a
17 car loan, the type of inquiry that's going to end
18 up on my credit report is going to be a hard
19 inquiry.

20 A soft inquiry is generally the result
21 of -- or is generally not the result of a consumer
22 applying for something, meaning that either it's
23 the result of a lender or an insurance company
24 making a firm offer of credit and/or buying a
25 list, a preapproved list from one of the credit

1 bureaus, or they're doing periodic account review
2 or account management runs, and those show up on a
3 credit report as being a soft inquiry.

4 And the -- I guess the practical
5 difference between the two is, as I put in my
6 report, the hard inquiry is fair game to credit
7 scoring systems and lenders, meaning that they can
8 see those if they pull someone's report, versus
9 soft inquiries which are only visible on consumer
10 disclosure reports, which are what we -- what
11 Exhibit 2 is an example of, and those do not have
12 any influence on credit scores and lenders do not
13 see them.

14 Q. What is an account review inquiry?

15 A. Well, not to be smart, but it's the
16 inquiry that's the result of a user doing an
17 account management or account review run with one
18 of the credit reporting agencies.

19 Q. And you mentioned that a user might buy a
20 list from a credit reporting agency. Is that what
21 is referred to as a promotional inquiry?

22 A. Yeah, it's either promotional or
23 prescreened.

24 Q. Okay. Do other companies buy information
25 from users of information?

1 MS. KAMKA: I object, lack of foundation.
2 You can answer if you know.

3 A. Let me think about that for a second.
4 So, again, just to make sure we're using the same
5 terminology, a user is generally going to be a
6 financial services company or a collection agency.
7 Is that how you're defining user?

8 BY MR. KIND:

9 Q. Yeah, I'll go along with how you define
10 it, so I'll agree with that.

11 And then the question is: After a user
12 obtains information from a credit reporting
13 agency, will they often resell it to a third
14 party?

15 MS. KAMKA: Same objection, lack of
16 foundation.

17 A. Not that I'm aware of. That's generally
18 frowned upon unless it's one company and the same.
19 But generally, no.

20 BY MR. KIND:

21 Q. So one company and the same. So it might
22 be a parent company or related company?

23 A. Sure, sure. But, you know, if I buy
24 10,000 credit reports and I'm John's bank, I can't
25 just go to you and say, Hey, you know, Michael's

1 bank, do you want to buy these credit reports from
2 me? That is not -- that doesn't happen.

3 Q. And how do you know that?

4 A. It's -- well, first off, it's called dual
5 use, and the credit reporting agencies don't allow
6 for dual use, because one of the two parties won't
7 be able to post an inquiry because the credit
8 bureau doesn't know of that subsequent reselling
9 of the report. And you can make an argument --
10 and I haven't fully contemplated this -- but you
11 can make an argument that the second party didn't
12 have permissible purpose.

13 MS. KAMKA: John, you probably know this,
14 and Michael probably would agree, but if you need
15 a break or anything, just let us know.

16 THE WITNESS: Okay.

17 MR. KIND: Yeah, absolutely. Just let me
18 ask you this anytime.

19 THE WITNESS: Okay.

20 MR. KIND: And you too, Mary Kate, or the
21 court reporter as well. Okay.

22 BY MR. KIND:

23 Q. So going back to what we just discussed,
24 account review inquiries, how do you define an
25 account?

1 A. An account would be kind of the umbrella
2 of information regarding the consumer and their
3 relationship -- in other words, kind of
4 identifying attributes of the consumer with a
5 lender, for example, and that may include the
6 name, address, social, date of birth of the
7 consumer, any current or former lender liability
8 types of relationships that they may have had, and
9 then attributes of that relationship.

10 Q. Are there always terms to an account?

11 MS. KAMKA: Object to form, just vague
12 and ambiguous.

13 A. I believe that pretty much when you apply
14 for an account with a financial service company,
15 you're asked to agree or you're asked to sign a
16 user agreement or a promissory note or a
17 cardholder agreement or click on a box if you're
18 doing it on line where you read and agree to their
19 terms of use, or terms and policies.

20 Q. Okay. So when you're defining an
21 account, what you call the attributes, so you're
22 referring -- let me start that again.

23 I understand in your report you make the
24 distinction between account and debts. My
25 question to you is: Other than those attributes

1 that you described, name, social, and other
2 similar information, do you believe there's
3 anything else necessarily -- necessary to have an
4 account?

5 A. Sure. Well, the only reason you have an
6 account is because you had at one time some sort
7 of lender liability relationship. So you may have
8 had a credit card at one point with Discover, or
9 you may have had a car loan at one point with
10 Wells Fargo, or, you know, you can think of a
11 bunch of other examples of lender liability
12 relationships.

13 Q. And you agree with -- would you agree
14 with me that there would be different statuses to
15 an account, correct?

16 MS. KAMKA: I object as vague and
17 ambiguous.

18 A. Yes, certainly accounts are going to have
19 varying statuses, depending on the point in time
20 of the account, yes.

21 BY MR. KIND:

22 Q. So I'm going to give you a few phrases or
23 terms, and I want to see what your
24 understanding -- your expert understanding of
25 those terms mean. So how would you define an

1 existing account?

2 A. I don't know that I've ever used that
3 term. I mean, an account is an account. They're
4 all existing. If there is no account then there
5 would be a nonexistent account.

6 Q. And does the industry ever use the phrase
7 or the term existing account?

8 A. What industry?

9 Q. Your industry, the credit industry.

10 A. I've never heard -- I've never heard
11 someone talk about an existing versus a
12 nonexisting account, except maybe in discussions
13 about fraud, did you open this account or not type
14 of scenario.

15 Q. Well, I don't want to be argumentative,
16 and I just have -- I'll ask you the question. In
17 Mr. Hendricks' report he refers to the term
18 existing account. He also cites the Metro 2 that
19 uses the term existing account.

20 Did you notice that or do you remember
21 that from Mr. Hendricks' report?

22 A. Not necessarily.

23 Q. Okay. Do you remember looking into or
24 reviewing the Metro 2 to see that phrase or term,
25 existing account?

1 A. I don't know that I reviewed the Metro 2
2 manual in the preparation of my report, because it
3 was not -- it was not substantive or it didn't
4 have a -- it wasn't influential or wouldn't have
5 been influential on my opinions.

6 Q. All right. How would you define a closed
7 account?

8 A. A closed account would be an account that
9 is no longer active and can no longer be utilized
10 by the borrower.

11 Q. But it would still be an existing
12 account?

13 A. Sure, because the account still exists,
14 yes. It's just an inactive or closed account.

15 Q. And because your definition of account is
16 data on a -- somewhere, either in a file or on a
17 computer system?

18 MS. KAMKA: I'll just object that it
19 misstates testimony.

20 A. Yeah, not necessarily. I mean, again, an
21 account is the record of the relationship between
22 two parties which would include attributes about
23 the relationship, attributes about the consumer
24 and attributes about the consumer's either active
25 or inactive liability.

1 Q. So how do you define an active account
2 versus an inactive account?

3 A. Well, certainly you could define an
4 inactive account as an account that has not had
5 any activity on it for some period of time, and
6 that's obviously going to vary by -- vary by
7 lender, what they consider to be active versus
8 inactive.

9 Certainly you could look at a credit card
10 that has charges being made every single month and
11 payments being made every single month and is
12 still capable of being used as being an active and
13 open account. So I think there's a bunch of
14 different scenarios that would fit both of those,
15 the active versus inactive scenario.

16 Q. Does -- as far as you know, does the
17 credit reporting or the credit industry have a
18 particular definition to the use of the word
19 account?

20 A. Not that I'm aware of.

21 Q. Do you know what it means when the term
22 housed, H-O-U-S-E-D, a housed account, have you
23 ever heard of such a phrase?

24 A. Did you say H-O-U-S-E-D?

25 Q. Yeah, an account that is housed on a

1 system. Have you ever heard of that sort of
2 phrase?

3 A. I don't think so.

4 Q. Okay. All right.

5 So we discussed the different statuses of
6 an account. Is it your opinion that so long as an
7 account exists a user can do an account review
8 inquiry?

9 A. Yes, sir, that's correct.

10 Q. And that's regardless of whether the
11 account is open or closed?

12 A. That's right.

13 Q. And that doesn't matter if the account is
14 active or inactive?

15 A. Correct.

16 Q. And it doesn't matter if the account is
17 existing or nonexisting?

18 A. Well, a --

19 MS. KAMKA: I object, that's vague and
20 ambiguous.

21 Go ahead.

22 A. If there is no account then there is
23 no -- there's nothing to review, meaning that if
24 John Ulzheimer is not a customer of Wells Fargo
25 then Wells Fargo can't do an account review

1 inquiry on my account because there is no account.
2 There's nothing for them to look at.

3 BY MR. KIND:

4 Q. Yeah, but you said your opinion is that
5 even if the account is closed, Wells Fargo would
6 be able to look at your -- do an account review,
7 correct?

8 A. Yeah, I think -- I didn't say -- we were
9 talking about nonexistent. We weren't talking
10 about closed. Nonexistent means it doesn't exist.
11 Closed means it does exist, it's just a closed
12 account.

13 Q. Okay. But you agree that if you closed
14 an account with Wells Fargo they could continue --
15 but your information -- so let me start that
16 again.

17 You close your account with Wells Fargo,
18 it's a savings account or a checking account, and
19 your information remains on their system. They
20 send you a letter, Thank you for your business,
21 your account is closed.

22 It's your opinion that they could
23 continue to access your consumer reports through
24 account review inquiries?

25 A. If --

1 MS. KAMKA: Object to form.

2 A. Again, if -- you're using kind of an odd
3 example, checking and savings. Normally banks
4 don't do account review inquiries for checking and
5 -- for deposit accounts. Normally they're for
6 liabilities.

7 So in your scenario, I -- an account
8 exists. I guess theoretically if Wells Fargo
9 wants to buy a bunch of credit reports for people
10 who have checking accounts with them, I guess if
11 they want to spend their money that way, sure.
12 It's an account.

13 Q. Okay. So the answer is yes?

14 A. Yeah. I mean, an account is an account,
15 right. There's different types of accounts.
16 Normally -- well, I don't know that I've ever seen
17 a bank do an account review inquiry on a deposit
18 account. They almost -- well, they'll always do
19 it on accounts that were like borrower-lender type
20 accounts, or where there's a liability.

21 Q. So let me change the hypothetical,
22 because it seems that that's causing a bit of --
23 so let's change it.

24 The hypothetical is a mortgage account,
25 and it's for \$150,000 and the customer pays it off

1 every single month. 30 years later they pay off
2 the entire balance, and the entire balance is over
3 and the bank sends a letter, Thank you for all
4 your payments, you don't owe us any more money,
5 the lien is removed, and your account is closed.

6 Can that bank continue to do account
7 review inquiries?

8 A. Sure. There's still an account. It just
9 happens to be a paid-off and closed account.

10 MS. KAMKA: Okay, Michael, when you get
11 to a stopping point can we take a quick break?

12 MR. KIND: Let me just finish up this --
13 a couple questions, if you don't mind.

14 BY MR. KIND:

15 Q. Could you tell me where you -- in any
16 cases you've testified as to this opinion that you
17 just gave, have you ever given that opinion in any
18 other case before?

19 A. Which -- you mean opinion from my report,
20 or just the discussion that we're having?

21 Q. The discussion that we're having.

22 MS. KAMKA: I just object --

23 MR. KIND: Let me be more clear.

24 THE WITNESS: Okay.

25 MR. KIND: I'm sorry.

1 THE WITNESS: Yeah, which opinion are you
2 asking me? Which sentence do you want to kind of
3 tag, and then we'll go from there.

4 BY MR. KIND:

5 Q. All right. Your opinion that you just
6 gave that even if an account is closed and paid
7 off, a user could still continue to access --
8 continue to do account review inquiries. Have you
9 ever given that testimony or put that in a report
10 before this case?

11 A. I almost certainly have. I just have to
12 remember. I mean, there's a difference between
13 testimony versus writing a report, right. So I'm
14 just trying to remember if it was testimony like
15 what we're doing right now versus just a report
16 like what I did back in November.

17 I honestly don't remember. I know I've
18 done it at the very least in report format. I
19 just can't remember if I've done it in testimony
20 format.

21 MR. KIND: Okay. I'm happy to take a
22 break now, if that's good with you. You want to
23 take five minutes?

24 MS. KAMKA: Yeah, five minutes will work.

25 THE VIDEOGRAPHER: The time is 2:09 p.m.

1 we are now off the video record.

2 (Recess)

3 THE VIDEOGRAPHER: The time is now 2:20
4 p.m. We are now back on the record after a short
5 break.

6 BY MR. KIND:

7 Q. All right. Are you aware of case law, of
8 any cases or court, that has held that once an
9 account is closed the user is not able to do an
10 account review inquiry?

11 MS. KAMKA: I just object that it's
12 outside the scope of the deposition and calls for
13 a legal conclusion.

14 You can answer.

15 A. No, sir, I'm not aware of any case law
16 that says that once an account is closed you're no
17 longer allowed to do an account review inquiry.

18 BY MR. KIND:

19 Q. Are you aware of any, besides for
20 Mr. Hendricks, any other experts who believe that
21 once an account is closed that a user is not able
22 to do an account review inquiry?

23 A. I -- and we're getting dreadfully close
24 to me guessing here, but I'll give you my best
25 estimate. If I remember correctly, I think the

1 cases that I've been involved with where this
2 issue with the postbankruptcy account review
3 inquiry has been the, kind of the primary issue, I
4 want to say that Evan has always been the expert
5 on the plaintiff's side, I guess if there was an
6 expert on the plaintiff's side. So I think it
7 always has been Evan's, but I can't tell you that
8 with 100 percent certainty.

9 Q. Do you -- have you ever written any
10 article that's -- where you express your opinion
11 that after an account is paid off and closed that
12 a user could continue to do account review
13 inquiries?

14 A. No. That's not generally the type of
15 article that I would write. That seems -- that's
16 a little complex for my blogging, and so no, I
17 wouldn't have written about something like that.

18 Q. Have you ever written that in a book?

19 A. I don't believe so.

20 Bless you.

21 Q. Have you ever seen your opinion -- okay.
22 So when I say your opinion, I'm talking about this
23 opinion that we just spoke about before the break,
24 that once a mortgage gets paid off and closed a
25 user could still access -- could still do an

1 account review inquiry.

2 So have you ever seen that written by --
3 in any -- let me start it again.

4 Have you ever seen that opinion written
5 down by anyone else in a book or an article?

6 MS. KAMKA: Michael, I'd just like to
7 object that the statement you made about the
8 opinion, you used the phrase mortgage. I'm not
9 sure if that was -- I think that misstated his
10 testimony. But if you could just clarify the
11 opinion you're working with.

12 MR. KIND: All right.

13 MS. KAMKA: You can answer, if you can.

14 A. I don't know -- I don't know that I've
15 ever seen -- I don't read a lot of books about
16 credit. When I do read stuff it's usually
17 articles that are written either by reporters or
18 bloggers, and I don't -- honestly don't know that
19 that has ever been -- again, that's a complex
20 topic that the layman doesn't normally find a lot
21 of interest in. So I don't know that I've ever
22 read -- I've certainly read tons of articles and
23 written tons of articles about inquiries, but
24 nothing kind of as specific as this issue of post
25 bankruptcy account review inquiries, read or

1 written.

2 Q. Well, my -- all right. My question
3 wasn't post bankruptcy, it was if an account was
4 paid off and closed. Does that change your
5 answer?

6 A. No, same answer.

7 Q. Okay. And also, I said mortgage, but if
8 it was another type of loan, a car loan, would
9 that change your answer?

10 A. No, sir.

11 MS. KAMKA: Object to form.

12 A. Sorry. All types of liabilities.

13 BY MR. KIND:

14 Q. Okay. So then the obvious next question
15 is: What is your opinion based on? What did you
16 review to form your opinion?

17 A. That it's permissible to do an account
18 review inquiry on an account post bankruptcy?

19 Q. Let's --

20 A. Because that's my -- that's the opinion
21 in my report. So I --

22 Q. Understood. So let me ask it in a
23 different way. The opinion that you discussed
24 today, which is that even if an account is closed
25 and paid off that a user could continue to do

1 account review inquiries, what is that based on?

2 MS. KAMKA: I'd just like to object that
3 it's outside the scope and it's not an opinion
4 that he's given in this case, but go ahead.

5 A. Sure. So, again, just because an account
6 is paid off either through a bankruptcy or --
7 excuse me, discharged through a bankruptcy or the
8 consumer pays it off, like in your 30-year
9 mortgage example a moment ago, the account still
10 exists, and accounts can be reviewed, which allows
11 for -- and that's straight out of the Fair Credit
12 Reporting Act permissible purpose, that it's
13 permissible to review an account.

14 There's also the legitimate business need
15 provision in the act as well, and there are
16 scenarios where a user of credit reports would
17 need to do an account review to perhaps for a
18 legitimate business reason.

19 Q. All right. I want to come back to
20 legitimate business reason in a second.

21 A. Okay.

22 Q. But for right now, I want to separate
23 your legal conclusions, I think they are, because
24 you're basing it on your interpretation of the
25 Fair Credit Reporting Act. And I want to kind of

1 separate it to your expert opinion, which is, I
2 think, is your experience and your knowledge of
3 the industry and your review and, you know, your
4 active participation in the industry.

5 So my question is: Based on your expert
6 opinion, what did you rely on in concluding and
7 having the opinion that if an account is paid off
8 and closed an account review is permitted?

9 MS. KAMKA: I'm just going to object,
10 again, that you're referring it to as his expert
11 opinion, but it's not an expert opinion offered in
12 this case.

13 A. Again, the fact that it's closed, open,
14 paid off, not paid off, in default, paid on time,
15 that's -- all that is irrelevant. The fact that
16 it's an account is what's relevant. If there's an
17 account then accounts can be reviewed, which is
18 why you have account -- you can have an account
19 review inquiry. So everything about the status of
20 the account is not meaningful. It's the fact that
21 the account exists which allows for the review of
22 the account.

23 Q. And my question is: What is that based
24 on? So I already asked you if you've seen that in
25 writing, and I think your answer was no. So did

1 anyone tell you, anyone in the industry tell you
2 that, what you just said?

3 A. Well, again, it's in the Fair Credit
4 Reporting Act. I've cited to this Jermaine versus
5 Bank of America case that I've cited to I think in
6 other expert reports. So that's the basis for the
7 opinion.

8 Q. So you're basing it on case law?

9 A. Certainly I have cited to that in other
10 reports. So, sure. That seems to be an opinion
11 in other courts.

12 Q. And would you categorize that as a legal
13 opinion, or are you still maintaining that that's
14 an expert opinion?

15 MS. KAMKA: I just object. That
16 misstates his testimony. He never designated it
17 as an expert opinion.

18 Go ahead.

19 A. No, it's certainly not a legal opinion.
20 I mean, I'm not a lawyer, so I'm not giving legal
21 opinions. That's just my understanding of the --
22 what that court, the court has determined in that
23 case, and also my understanding of permissible
24 purpose in the Fair Credit Reporting Act.

25 BY MR. KIND:

1 Q. Okay. So let me just ask the open-ended
2 question. Do you have anything else to add as
3 support for what you are saying regarding a closed
4 and paid off account?

5 MS. KAMKA: Object to form.

6 A. Well, other than the fact that just
7 because it's closed and paid off or discharged or
8 whatever doesn't extinguish the fact that the
9 account exists.

10 Q. Do you have any other basis other than
11 what you put in your report and what you discussed
12 just now that you're forming that opinion on?

13 A. No, that's it.

14 Q. Are you aware of any -- let me start that
15 again.

16 Have you reviewed users of -- did you
17 review Ditech's policies and procedures?

18 A. So I reviewed --

19 MS. KAMKA: I just object to form.

20 THE WITNESS: I'm sorry. Can y'all go
21 through that again? We didn't catch that over
22 here.

23 MS. KAMKA: Want to ask the question
24 again, Michael?

25 BY MR. KIND:

1 Q. Sure. Have you reviewed Ditech's
2 policies and procedures?

3 MS. KAMKA: And I have an objection,
4 vague and ambiguous.

5 A. So the only policy manual that I
6 reviewed, Mr. Kind, is Ditech's bankruptcy policy
7 manual. But other than that, no.

8 Q. I think you said before, but did you
9 receive all of the exhibits to Hardwick's
10 deposition?

11 A. I don't know if I received all of the
12 exhibits to his deposition or not. The documents
13 that you see listed on my documents reviewed list
14 on page 19 of my report, that's everything that I
15 received prior to the date of the report. So if
16 there are documents there that are not -- or,
17 excuse me, if there are other documents that were
18 part of Mr. Hardwick's report -- I'm sorry,
19 deposition, that are not listed, then no.

20 Q. Do you happen to know the Bates
21 numbers -- do you know if the bankruptcy policy
22 manual was Bates numbered?

23 A. I don't recall if it had Bates labels or
24 not, my apologies.

25 MR. KIND: Can we go off the record?

1 MS. KAMKA: Sure.

2 THE VIDEOGRAPHER: The time is 2:32 and
3 we are now off the record.

4 (Off the record discussion)

5 (Recess)

6 THE VIDEOGRAPHER: The time is now 2:34
7 p.m. We are back after a break.

8 BY MR. KIND:

9 Q. Okay. All right. Is Ditech a --
10 Ditech's relationship with Mr. Kamimura, in that
11 relationship is Ditech considered a lender?

12 A. It's my understanding that they're a
13 servicer.

14 Q. Okay. So before in connection with the
15 definition of an account you had mentioned the
16 lender-borrower relationship, and you also
17 mentioned that in your report.

18 Does that apply also to a servicer?

19 A. Sure, because servicers do account review
20 inquiries and pull credit reports. So they would
21 be subject to the same permissible purpose rules
22 as like a first party lender would be.

23 Q. Okay. However, what is a servicer?

24 A. So specific for mortgages, or just any
25 servicer in general?

1 Q. Let's start general and then go to
2 mortgages.

3 A. Sure. So servicers will generally
4 facilitate some of the functions that the lender
5 either chooses to not facilitate that have been
6 outsourced by the lender. For example, credit
7 reporting is an example, dispute resolution is
8 another example, receiving payments is another
9 example. And that holds true for student loan
10 servicing as well as mortgage loan servicing. I
11 certainly don't consider myself to be an expert on
12 the intricacies of loan servicing, but that's my
13 understanding kind of at a high level.

14 Q. Uh-huh. Okay. So from the time that
15 Ditech became a servicer on Mr. Kamimura's
16 account, can you tell me what services they were
17 serving?

18 MS. KAMKA: I just object that it lacks
19 foundation, is vague and ambiguous.

20 A. Other than credit reporting, I don't know
21 what services they were providing to Mr. Kamimura.

22 Q. Oh, I have a few other types of accounts
23 I wanted to ask you about.

24 A. Okay.

25 Q. Have you heard of a demand deposit

1 account?

2 A. Yeah, it's a checking account. A DDA.
3 That's kind of the layman's -- that's a formal
4 term for a checking account.

5 Q. What is a savings deposit account?

6 A. Well --

7 MS. KAMKA: I object, lack of foundation.

8 A. Sorry. It's an interest-bearing account
9 where a customer could deposit monies with a
10 financial institution, financial services company,
11 and earn interest on that money. So it's kind of
12 a, if you will, a place to park your money.

13 BY MR. KIND:

14 Q. And how about an asset account?

15 MS. KAMKA: Object to form.

16 A. I'm not sure what an asset account is,
17 not a term that I'm familiar with.

18 Q. All right. Would you agree with me that
19 any part of your opinion that could be interpreted
20 as an opinion on the effect of a bankruptcy would
21 be outside the scope of your expertise?

22 MS. KAMKA: I'd object as compound, and
23 to form.

24 A. The effect of bankruptcy on what? I
25 mean, I certainly am very knowledgeable about the

1 effect of bankruptcy on a variety of things:
2 credit reporting, credit scoring, how a lender
3 feels about seeing bankruptcies on people's credit
4 reports. And I have an understanding of what a
5 bankruptcy does to debt as well. So if you could
6 be more specific.

7 BY MR. KIND:

8 Q. Yeah. And I have a different question
9 now.

10 So you said you have an understanding.
11 But do you have an expertise on what a bankruptcy
12 does to debt?

13 A. Define expertise.

14 Q. Would you say you're just as much an
15 expert on the effect of bankruptcy on debt as you
16 are on credit reporting?

17 A. No. I would say no.

18 Q. Would you feel comfortable writing an
19 expert report and testifying about the effects
20 that a bankruptcy discharge has on a particular
21 debt?

22 A. I don't know. I'd have to think about
23 that. I haven't really ever been asked to do
24 that, so I haven't really ever contemplated doing
25 that. I mean, I would certainly disclose to the

1 attorney that wanted to retain me that almost -- I
2 mean, you almost said it how I would say it, that
3 I don't -- relative to my expertise in credit
4 reporting and scoring, I wouldn't put bankruptcy
5 on the same shelf as those two, and then he or she
6 would have to decide if I was the right person for
7 that job.

8 MS. KAMKA: Michael, Don's back with the
9 documents. Do you mind if you give us five
10 minutes to sort that out, or do you want to finish
11 this line of questions first?

12 MR. KIND: Give me one second.

13 MS. KAMKA: Sure.

14 MR. KIND: Let me just finish, if you
15 don't mind.

16 MS. KAMKA: Go ahead.

17 BY MR. KIND:

18 Q. So were you asked in this particular case
19 to give an effect of Mr. Kamimura's bankruptcy on
20 the debt?

21 A. No. I'm familiar with what it did to the
22 debt, but no, I wasn't asked to offer any opinions
23 regarding that issue.

24 MR. KIND: Okay. Yeah, let's take five
25 minutes.

1 MS. KAMKA: Okay, great.

2 MR. KIND: Thank you.

3 THE VIDEOGRAPHER: The time will be 2:41
4 p.m. We are off the record.

5 (Recess)

6 THE VIDEOGRAPHER: The time is now 2:51
7 p.m. We are back after a break.

8 MR. KIND: Okay. Oh, so Mary Kate, did
9 you get the Bates Numbers?

10 MS. KAMKA: Don's getting that right now.
11 We found the document, but when we -- the document
12 that John looked at did not have the Bates numbers
13 on it because I think it was earlier. But we're
14 checking the production to get you the Bates
15 numbers.

16 MR. KIND: Thank you very much.

17 BY MR. KIND:

18 Q. So, Mr. Ulzheimer, if an account is
19 discharged in bankruptcy and then closed by the
20 bank, is your answer the same as if that account
21 was paid off and then closed by the bank?

22 MS. KAMKA: Object to form on what
23 opinion you're talking about.

24 A. So the first sentence in your question
25 was if an account is discharged in bankruptcy, and

1 so my entire premise and my first opinion is that
2 accounts are not discharged in bankruptcy, debts
3 are discharged. So I don't know if you wanted to
4 reask it or whatnot, but that would be my response
5 to the question if it's as is.

6 Q. And I try to make a point of -- and I
7 think I said it before. I understand your opinion
8 and I didn't mean to mix them up. So I appreciate
9 you pointing that out.

10 A. Okay.

11 Q. So let me reask the question, because I
12 did mean that.

13 If a debt is discharged in bankruptcy and
14 then the bank closed the account, is it your
15 opinion that it is okay for the bank to continue
16 to do account review inquiries?

17 A. Yes, sir, it is.

18 Q. When does that end? In other words, when
19 does the bank have to stop doing account review
20 inquiries, after the account is paid off or
21 discharged -- I'm sorry, after the debt is either
22 paid off, discharged, or the account is closed?

23 MS. KAMKA: Object to form, vague and
24 ambiguous.

25 A. That's actually, that's an interesting

1 question. I don't know that I've ever been asked
2 that before, nor have I ever contemplated that if
3 there is, in fact, an end date. So I don't know.
4 I don't have an answer for you, because I haven't
5 ever really contemplated that.

6 Q. All right. But your opinion is at least
7 within the first year after the account -- after
8 the debt is discharged or the account is closed
9 that it is okay for account review inquiries to
10 continue?

11 A. Well, I don't think qualify it based on
12 any amount of time. So -- but certainly, yes,
13 within a year, again, as long as the account still
14 exists. And in the scenario of Mr. Kamimura, the
15 account review inquiry occurred several years
16 after -- excuse me, occurred several years after
17 the filing date. And so -- but yes, I mean,
18 within a year, certainly, because, again, the
19 account still exists. But I've never requested
20 the opinion based on some period of time elapsing.

21 Q. You didn't, that's right. In the opinion
22 there's no time. So that's kind of where I'm
23 going.

24 So one year seems to be okay. How about
25 five years later?

1 A. Yeah, I -- again, I think that kind of
2 almost fits the scenario here. I mean, the filing
3 date was in August of '10, this account review
4 inquiry on Exhibit Number 2 is four years after
5 that date. But, again, the account still exists.
6 I mean, it's on page 3 of this credit report in
7 the account section, so, sir, again I have no
8 problem -- I have no problem with that.

9 Q. How about 10 years after an account -- so
10 let's be specific. We're talking about an account
11 that is paid off and then closed by the bank. Ten
12 years after the close date is it still okay to do
13 account review inquiries?

14 A. Again, I don't know. I don't know if
15 it's okay or not. I don't know of anything in the
16 FCRA or in the credit bureaus' policies where it
17 says after some period of time elapses you're no
18 longer allowed to do account review inquiries. So
19 I don't know.

20 Q. Okay. So somewhere between five and 10
21 years, or are you just not sure?

22 A. Yeah, again, I haven't contemplated that
23 issue, and this scenario was four years. And I'm
24 of the opinion that that's fine, because the
25 account still existed. So I don't know of any

1 policy or practice where once some amount of time
2 elapses that account review inquiries are no
3 longer permissible. I don't know. I don't know
4 if that's ever been brought up or discussed or
5 contemplated. It's an interesting topic.

6 Q. Yeah. So your -- what if the borrower
7 dies? So, you know, if he dies, he's no longer
8 alive, but the account, as you defined it, would
9 still exist. Could the account review inquiries
10 continue?

11 MS. KAMKA: I'm going to object as
12 compound.

13 A. Systemically the answer might be no,
14 because the credit reporting agencies, once
15 there's a deceased indicator on a consumer's
16 credit report, the credit reporting agencies begin
17 to restrict access to that credit report for a
18 variety of reasons. So from a systemic
19 perspective, the answer to your question may
20 actually be no.

21 But not necessarily, because there's
22 anything in the act that says you can't do an
23 account review inquiry on someone who's dead.
24 There's no language in there that suggests that.
25 So there may not be the ability to get the credit

1 report because of years may restrict it.

2 Q. Let me go back to the point, what we were
3 discussing before. 10 years, 10 years after an
4 account is closed, I understand you didn't
5 consider the exact time. But there have to be at
6 some point it ends.

7 So could you tell me in your expert
8 opinion at what point do account review inquiries
9 have to end after an account is closed or paid --
10 after an account is closed or the debt is paid off
11 or discharged?

12 MS. KAMKA: I'd object that it's
13 compound.

14 Go ahead, John.

15 A. I don't have an expert opinion. I don't
16 even have a nonexpert opinion on that, because
17 I've never -- I've never considered that. It's
18 not something I can -- I don't have the answer for
19 you open off the top of my head. That's something
20 I would have to mull on for awhile and contemplate
21 what that actually means.

22 And certainly there's going to be some
23 period of time where the lender no longer sees
24 value in doing an account review inquiry because
25 there's no benefit to them for doing so, or maybe

1 there's no need to have an updated address for the
2 consumer any longer so maybe they just choose to
3 stop doing them. But I don't know when that
4 tipping point is, or even if there is a tipping
5 point.

6 Q. It sounds to me that what you're saying
7 is it's going to be up to the bank or to the
8 lender to determine when it ends?

9 MS. KAMKA: I just object that it
10 misstates testimony.

11 A. Account review inquiries are not free.
12 There is a cost involved to the bank when they do
13 these. And so, you know, all these companies on
14 Mr. Kamimura's credit report listed in the
15 account -- and in the promotional inquiry section
16 paid, paid to do this. There's a cost involved.

17 And so certainly it's up to them to
18 determine whether or not they still see value in
19 doing so and therefore spending the money to do
20 it, and they may eventually say, Okay, after X
21 number of years we see no more value, therefore
22 we're not going to do it any longer. But I don't
23 know that to be true for Ditech or any other
24 lender. That's just my understanding, because I
25 used to sell these services when I was at Equifax,

1 that eventually they just choose to stop doing
2 them.

3 Q. Is there any way that you're aware of
4 that a consumer could stop account review
5 inquiries on their account?

6 A. No. The only -- no. There is no
7 systemic -- there is no systemic way that a
8 consumer can do something to restrict account
9 review inquiries, other than not having an account
10 with somebody.

11 Q. So is there any way that a consumer could
12 request to not have an account with somebody?

13 MS. KAMKA: I object, vague and
14 ambiguous.

15 A. You mean after one has already been
16 established, or you mean in a relationship where
17 there never was one in the first place?

18 BY MR. KIND:

19 Q. Let's talk about when one is established.
20 So we could use that hypothetical, Mr. Kamimura,
21 after the debt was -- let's use a different
22 hypothetical.

23 If someone pays off their account and
24 then they get a letter that the account is closed
25 and then that consumer wants to stop the account

1 review inquiries or do something else and he wants
2 the account to go away, is there any way to do
3 that?

4 A. I'm not aware --

5 MS. KAMKA: Objection, compound.

6 A. Sorry. I'm not aware of any way that a
7 consumer can request that the account be purged.

8 BY MR. KIND:

9 Q. How about the other scenario that you
10 mentioned, which is if an account never existed
11 before. Is there a way a consumer requests that
12 no account ever be opened?

13 A. Sure. I mean, the consumer obviously
14 controls that relationship, and if -- I mean, let
15 me think about -- of a lender. I don't know,
16 Chase. I don't have an account with Chase. And
17 so I can choose to continue to never apply for
18 anything with Chase, and therefore there would not
19 ever be an account in my name with Chase, and so
20 therefore they wouldn't be able to do account
21 review inquiries or account management inquiries
22 on me, because there is no account.

23 Q. As you defined account before, if Chase
24 somehow acquired all those attributes that we
25 spoke about, so they're a lender, they acquire

1 your name and your social security number, your
2 email address, your address, and opened an
3 account, is that possible without your
4 involvement?

5 MS. KAMKA: Object as vague and
6 ambiguous.

7 A. It's certainly possible that that can
8 happen without my maybe overt knowledge, for
9 example, in the mortgage type of scenario where I
10 may apply for a mortgage loan and then the loan is
11 immediately sold to Chase at closing, but I never
12 applied with Chase, I applied with a mortgage
13 broker. So that's certainly an example there
14 where I didn't go out and overtly try to open an
15 account with them.

16 But other than that, unless it's a case
17 of just true name fraud where someone is applying
18 for credit in my name and they happen to do it
19 with Chase, then I can't think of a scenario where
20 they would have gotten my information otherwise,
21 except maybe in a merger or they bought a
22 portfolio of credit cards from somebody where I
23 happen to be an existing credit card customer.

24 MS. KAMKA: Michael, I don't want to
25 interrupt you, but we have the Bates range when

1 you want it.

2 MR. KIND: Yeah, if you could let me know
3 now.

4 MS. KAMKA: It's 388 through 441. Oh,
5 sorry, 338 through 441.

6 MR. KIND: Thank you.

7 MR. KIND: Okay. We'll come to those in
8 a second.

9 BY MR. KIND:

10 Q. I want to turn back. We discussed
11 briefly about the terms of an account, you spoke
12 about the terms and conditions. Could you define
13 again what the terms -- how you understand the
14 word terms?

15 A. Sure. So terms can be -- when you say
16 terms of an account I think of two things, okay.
17 One would be all of the legal language that you
18 agree to when you apply for or open an account
19 and -- or click on the little button that says you
20 have read the terms and you agree to the terms,
21 which, you know, I don't have any scientific
22 evidence of this, but I can probably say
23 anecdotally probably the majority of people don't
24 read that stuff. So the terms.

25 And then the second way I would define

1 terms would be the more consumer facing terms of
2 an account. So, for example, your credit limit or
3 the interest rate or your annual fee or the
4 amortization schedule of a loan. So those are the
5 terms that I think most consumers would be more
6 familiar with.

7 And then also kind of the legalese kind
8 of behind the account, if you will.

9 Q. So when a bank does an account review are
10 they trying to see if the consumer is meeting the
11 first or the second definition of the terms?

12 MS. KAMKA: Object, lack of foundation.

13 A. I would suggest that they're -- well,
14 first off, a lender can do an account review run
15 for a variety of purposes internally. But I don't
16 know of any account review run that would be --
17 most of the time account review run is done from a
18 risk perspective, anyway, to determine if the
19 consumer is still performing credit-wise in such a
20 way that the lender still feels comfortable doing
21 business with them. And that would be kind of in
22 an unsecured type of relationship like a credit
23 card account. But I'm not aware of anything that
24 the initial legalese, meaning the terms of the
25 account that you agree to when you open it, are,

1 you know, being revisited because of an account
2 review. But, again, I don't work for a lender, so
3 maybe that is something that they consider.

4 Q. So generally they're looking for -- is it
5 fair to say that generally they would be looking
6 for the second definition, which is to make sure
7 that the payments are on time, that the interest
8 rate should continue to stay what it is, and, you
9 know, that they have the ability to make their
10 payments? Is that right?

11 MS. KAMKA: I'd just object, it's
12 compound, calls for speculation, and lack of
13 foundation.

14 A. Yeah, I mean, it's not uncommon for a
15 lender to do an account review or an account
16 management run because they want to make sure that
17 they still -- that the consumer still poses the
18 level of risk that they're comfortable with under
19 the current terms of the account, such as the
20 interest rate and the credit limit, for example.

21 Q. Okay. In Mr. Kamimura's case, he had a
22 bankruptcy discharge in April 2014. What were the
23 terms of his account after April 2014?

24 A. Other than the balance --

25 MS. KAMKA: Object, sorry, object to

1 form.

2 A. Other than the balance being zero, I
3 don't know what the terms of Mr. Kamimura's HELOC
4 were at that time.

5 Q. Okay. So you know that the balance was
6 zero?

7 A. It's what it shows on the credit report,
8 so I'm assuming if that's accurate, the balance
9 appears to be zero.

10 Q. Okay. So let's assume that that's
11 correct. So the balance is zero. Could the
12 interest rate have been anything greater than
13 zero?

14 A. Well --

15 MS. KAMKA: Object, calls for
16 speculation.

17 A. Yeah, I don't know what the interest rate
18 was. Generally when you have an interest rate it
19 is greater than zero, but I don't know if you
20 would apply an interest rate to a loan that has
21 been closed. So I don't know what the interest
22 rate could or would have been. But normally when
23 there is an interest rate it's greater than zero.

24 BY MR. KIND:

25 Q. What about the monthly payment? Is it

1 possible -- obviously the monthly payment would
2 have to have been zero as well, correct?

3 A. Yes, sir. If there's -- if there's a
4 zero balance then obviously you wouldn't be making
5 payments on it, so there would be no payment due.

6 Q. And this was a mortgage, so there would
7 be no annual fees as far as you're aware, correct?

8 A. Again, the credit report doesn't indicate
9 annual fees associated with an account. So I
10 don't -- I wouldn't know if it has an annual fee
11 or not.

12 Q. All right. Could you tell me a scenario
13 where what we just discussed, there's a zero
14 balance and the scenario where it's possible for
15 the consumer to violate those terms in any way?

16 MS. KAMKA: I'll just object to form.

17 A. I'm sorry, to violate the terms of what?
18 BY MR. KIND:

19 Q. Of that specific debt and that account.

20 MS. KAMKA: Same objection.

21 A. I can't off the top of my head think of
22 anything that the consumer can do to violate the
23 terms of the account.

24 BY MR. KIND:

25 Q. And would the consumer have to do

1 anything to continue to meet the terms of that
2 account?

3 A. I don't believe so, but I wouldn't know,
4 because I don't know what the terms are.

5 Q. Well, we know that the terms -- that the
6 balance is zero. So which other terms are you
7 saying that you don't know what they are?

8 A. Well, I don't know what the terms of the
9 account are at all, other than the fact that it's
10 got a zero balance. And so I don't know what
11 Mr. Kamimura could or could not do to either
12 violate or continue to comply with the terms of
13 the account.

14 Q. Okay. Could you give me an example of
15 what other terms might exist? So we know that
16 this is a junior mortgage and it was discharged in
17 bankruptcy and it was being reported with a zero
18 balance. Could you give me a scenario of what
19 other things -- what other terms might have
20 existed, if you know?

21 A. After the bankruptcy?

22 Q. Yes.

23 A. I can't think of any offhand.

24 Q. Okay. All right. Now, what would you --
25 how would you describe or define industry

1 standards?

2 A. In my industry or just in general?

3 Q. Sorry, in your industry.

4 A. Sure. So, well, in my industry -- well,
5 and let me just specify. Credit recording,
6 because credit reporting and credit scoring aren't
7 the same industry. But credit reporting, the
8 industry standards are as far as credit reporting
9 goes are defined in that Metro 2 manual that we
10 referenced a little while ago. So that is the
11 industry standards guide for credit reporting.

12 Q. Is there a separate manual of guides that
13 relates to credit pulls?

14 A. Credit pulls. The Metro 2 manual doesn't
15 address inquiries, which is what a credit pull is.
16 Certainly the Fair Credit Reporting Act has an
17 entire section dedicated to credit pulls. But as
18 far as an industry standard, I mean, I guess you
19 could say that the Fair Credit Reporting Act is a
20 pretty good industry standard because it's the
21 law. But as far as an industry-published standard
22 on credit pulls, other than what's in the
23 subscriber agreements between the credit bureaus
24 and their users, I'm not aware of anything.

25 Q. Okay. All right.

1 You should have there Exhibit 4, and that
2 would be Exhibit 12 from Hardwick's deposition.

3 A. Okay, I have it.

4 Q. Have you seen this document before?

5 A. I have not.

6 Q. Does this look similar to the Fair Credit
7 Reporting Act policies that you have seen?

8 MS. KAMKA: Object to form.

9 A. Fair Credit Reporting Act policies? Is
10 that what you --

11 BY MR. KIND:

12 Q. Yeah, let me -- I said that. But the
13 ones that you refer to in your opinion and that
14 you reviewed, the Bates numbers that we have --

15 A. Which of -- which opinion are we talking
16 about? The first one?

17 Q. Let me start again.

18 A. Okay.

19 MS. KAMKA: Hey, guys, we're not getting
20 any audio on our end, but it -- can you guys hear
21 me?

22 THE WITNESS: I can hear you.

23 MR. KIND: Yeah.

24 MS. KAMKA: Okay. Was there just a long
25 silence there?

1 MR. KIND: Yes, there was.

2 MS. KAMKA: Okay, great. We just wanted
3 to make sure we weren't out of the deposition.

4 THE WITNESS: Just to let you know from
5 my perspective, both of you guys are freezing from
6 time to time also, but I can still hear both of
7 you.

8 MS. KAMKA: Thanks.

9 MR. KIND: I'm also having some freezing.
10 All right, okay.

11 BY MR. KIND:

12 Q. All right. So we're on Exhibit Number 4.
13 And, well, you said you haven't seen this before,
14 hmm?

15 A. I have not, no, sir.

16 Q. All right. Well, let's go to, anyway, to
17 page 2, the second page.

18 A. Okay.

19 Q. I'm sorry, it's page 3.

20 A. All right.

21 Q. Page 3 in the middle, there's a warning.
22 And it says there, A CBR may never be requested
23 for the following.

24 Do you know what CBR stands for?

25 A. I do not. I don't see a -- I don't see

1 anything earlier on that says what -- oh, yes, I
2 do, I'm sorry. CBR, credit bureau report.

3 Q. Okay. So back to page 3, it says, A CBR
4 may never be requested for the following. And
5 then the second bullet point, the second point is
6 customer whose debt was discharged in bankruptcy
7 and the collateral is no longer secured. Do you
8 see that?

9 A. Yes.

10 Q. Would you agree that this policy here is
11 consistent with industry standards, or is that
12 not?

13 A. I don't know what the industry standard
14 is regarding pulling credit reports for consumers
15 that were discharged in bankruptcy and collateral
16 is not secured any longer, so I don't know if
17 that's -- I don't know if that's consistent or
18 inconsistent with industry standard.

19 Q. Well, how many -- I thought that your
20 opinion was that if a debt is discharged in
21 bankruptcy and the collateral no longer existed
22 then as long as the account exists, account
23 reviews are okay. Am I mis -- am I wrong?

24 A. I think I've said that as long as an
25 account still exists then you can review the

1 account. I'm not sure we got into --

2 Q. Okay.

3 A. -- collateral being secured or unsecured.
4 I think we just talked about the account still
5 existing.

6 Q. Yeah, that's true. So let's talk about
7 collateral.

8 As I understand it, your definition and
9 your understanding of -- well, as I understand it,
10 your opinion about account reviews and the
11 existence of an account doesn't really concern
12 itself with whether or not there's collateral or
13 not. As long as there's an account, regardless of
14 if there's collateral that is secured or not,
15 isn't it your opinion that as long as the account
16 exists there could be an account review?

17 A. That's right. The presence or lack of
18 collateral wasn't part of the opinion.

19 Q. Okay. So back to this here, which I can
20 represent to you is one of Ditech's policies.

21 A. Okay.

22 Q. So on page 3, I guess your opinion would
23 be that this is overly cautious or -- and this
24 doesn't -- this is not required under the
25 industry?

1 MS. KAMKA: Object to form.

2 A. I'm quite certain that this is not
3 language in the industry standards manual, any
4 version of it that I've ever seen, and I've seen
5 it for 15 years. Whether it's overly cautious or
6 not, I don't know. This is the first time I've
7 ever seen it, and I don't know other than the
8 words on -- I don't know.

9 The date also postdates the date of the
10 inquiry, so I don't know, other than what it says,
11 I don't know if it's just a policy that Ditech has
12 or whether or not it's conservative or aggressive.

13 Q. Okay. And you said so the industry
14 standards or any version that you've reviewed, are
15 you talking about Metro 2?

16 A. The Metro 2 manuals, the credit reporting
17 resource guides that are published every year.

18 Q. So the Credit Report Resource Guide, is
19 that the same as Metro 2, or is that something
20 else?

21 A. Yeah, the Credit Reporting Resource
22 Guide, or the CRRG, some people informally refer
23 to that as the Metro 2 manual. And --

24 Q. Understood.

25 A. No, no, that's fine. And the reason we

1 do that is because saying Credit Reporting
2 Resource Guide over and over again gets to be a
3 pain in the ass, so it's easier just to call it
4 the Metro 2 manual.

5 Q. Okay. Is it your opinion that as far as
6 account reviews go, the industry doesn't concern
7 itself with whether a bankruptcy is filed as
8 opposed to a bankruptcy being discharged, but it
9 just relies on whether or not account exists?

10 A. Well, the industry standards manual
11 doesn't address that issue at all. It's not --
12 it's -- I guess to use a lawyer term like maybe
13 you would use, it's silent on that issue. So
14 really it's up to all users of credit reports who
15 have user agreements with credit reporting
16 agencies to make their own decision as to what --
17 whether they're -- when they're accessing their
18 credit report whether they have permissible
19 purpose to do so.

20 Q. Have you ever seen anyone in the industry
21 have a policy that makes a difference for account
22 review whether an account is filed in bankruptcy?

23 A. I -- no, but that's -- I don't
24 normally -- that's not usually an issue that I'm
25 asked to address, and so the answer is no, simply

1 because that's not something that I would normally
2 do.

3 Q. Okay. Well, then we have here Exhibit 4.
4 Other than this, have you ever seen any document
5 from within the industry talking about account
6 reviews and when they can happen and when they
7 cannot happen in connection with a bankruptcy?

8 MS. KAMKA: Object to form.

9 A. Well, just -- you know, just to be fair,
10 this doesn't refer to account reviews. So I would
11 say that this doesn't even refer to account
12 reviews, unless I'm missing something. This just
13 talks about pulling a credit report. But the
14 answer to your question is no.

15 Q. Well, isn't account review pulling a
16 credit report?

17 A. It is, yes.

18 Q. Okay. All right. Now, what reason did
19 Ditech have to access Mr. Kamimura's consumer
20 report after April 2014, after the discharge?

21 MS. KAMKA: Object, lack of foundation.
22 Go ahead.

23 A. I don't know what their specific reason
24 was for requesting Mr. Kamimura's credit report.

25 BY MR. KIND:

1 Q. Could you give me a possible reason, what
2 they might have wanted?

3 MS. KAMKA: Objection, calls for
4 speculation.

5 Go ahead.

6 A. I don't know this to be true or not. I'm
7 just going to give you an example of why someone
8 may want a credit report. But, again, this isn't
9 specific to Ditech.

10 For example, if they need an updated
11 address to send a surplus of escrow funds, for
12 example. If they need an updated address to send
13 some tax-related documents. That could be a
14 reason why you would do an account review pull.

15 BY MR. KIND:

16 Q. Is there anything else? So the first one
17 is looking for an address. Is there something
18 else that they might want to look at a consumer
19 report to find?

20 MS. KAMKA: Same objection.

21 A. Yeah, there may be. I just don't know
22 what that exhaustive list might be.

23 BY MR. KIND:

24 Q. That's kind of what this case is about,
25 and I'm trying to see if you could help me out and

1 just list them off of what you think might be a
2 possible permissible purpose.

3 So we have an address. Is there anything
4 else you can think of that they might try to find
5 for someone who has a zero balance?

6 MS. KAMKA: I just object that it calls
7 for speculation and is outside the scope of his
8 opinion.

9 Go ahead.

10 A. Yeah, I -- again, that's not my job. So
11 I would be completely guessing. So I don't know
12 what else they might need from a credit report
13 after the bankruptcy.

14 BY MR. KIND:

15 Q. Okay. Whose job do you think it is? Do
16 you think it's Ditech's job to explain that?

17 MS. KAMKA: I'd object, calls for
18 speculation, lack of foundation.

19 A. I'm sure there are people who are
20 mortgage lending experts who might give you three
21 pages of reasons why they may need to do an
22 account review after a bankruptcy. I just -- I'm
23 not that person.

24 BY MR. KIND:

25 Q. Okay. Did you speak with anyone at

1 Ditech in connection with this case?

2 A. No, sir, I did not.

3 Q. Did you speak to anyone other than your
4 attorneys in connection with this case?

5 MS. KAMKA: Objection, vague. We do not
6 represent Mr. Ulzheimer.

7 MR. KIND: I'm sorry.

8 BY MR. KIND:

9 Q. Did you speak to anyone other than
10 Ditech's attorneys in connection with this case?

11 A. No, sir, just -- just the two other
12 attorneys on the line here.

13 Q. All right. What else do we have? Okay.

14 Yeah, I'm going now to your second
15 opinion, and I just have a few questions.

16 A. Okay.

17 Q. I think you -- well, let me ask you. You
18 don't consider yourself an expert on emotional
19 distress, correct?

20 A. No, sir, I don't.

21 Q. So any testimony or opinion relating to
22 emotional distress would be outside the scope of
23 your expertise.

24 A. Yes, sir. I don't offer testimony on
25 emotional distress because I don't have a -- I'm

1 not medically trained like that.

2 Q. How do you define the term economic harm?

3 A. Monetary.

4 Q. Okay. Well, sometimes emotional distress
5 could be economic harm, or no?

6 MS. KAMKA: Objection, outside the scope,
7 lack of foundation, calls for speculation.

8 A. Maybe I should be more specific, then.

9 I'm not offering -- none of my opinion, even the
10 title of the opinion, has anything to do with
11 emotional distress. So it would be economic
12 damages outside of emotional distress allegations
13 of damages, such as higher interest rates,
14 declinations of loans, higher insurance premiums,
15 the loss of a job, things like that.

16 BY MR. KIND:

17 Q. Would you consider privacy to be under
18 the economic harm or under emotional distress?

19 MS. KAMKA: Object to form.

20 A. I don't know that I would put it under --
21 I mean, I'm not an expert on emotional distress,
22 and so I don't know what would belong underneath
23 that umbrella. Privacy, I don't consider that to
24 be -- that may be something completely separate on
25 its own.

1 BY MR. KIND:

2 Q. Okay. But an invasion of privacy, if
3 someone feels that their privacy has been invaded,
4 that would not fall under economic harm, correct?

5 A. Not in my mind. I mean, economic damages
6 are pretty straightforward, either you were or you
7 were not charged a higher interest or a higher
8 premium. The reason behind it can be explored,
9 but I don't know if privacy fits into that.

10 Q. On the issue of Ditech being a potential
11 target for hackers --

12 A. Okay.

13 Q. -- would you agree with me that companies
14 similar to Ditech are frequent targets of hackers?

15 A. I --

16 MS. KAMKA: Object, calls for
17 speculation.

18 A. Yeah, I don't -- I need to think about
19 that. I don't know that there's a good source for
20 hacking targets. There's a good source for
21 hacking victims and incidents. But I don't know
22 of any source that tracks attempted hacks, so I
23 don't -- I would say I don't know, just because
24 that kind of information isn't readily available
25 that I know of.

1 BY MR. KIND:

2 Q. But just from your knowledge of the
3 industry, credit, identity theft, you'd agree with
4 me that big companies that have a lot of
5 information about a lot of consumers are often
6 targeted by hackers, correct?

7 A. Sure. I would agree with that because
8 there are well published examples of large
9 companies that are victims of hacking.

10 Q. And are you -- are you aware that
11 Nationstar Mortgage Company was hacked at some
12 point? Have you heard of that?

13 A. I have heard of Nationstar. I'm not
14 familiar with any sort of hacking incident
15 involving Nationstar.

16 Q. Have you heard of any other mortgage
17 lenders or servicers that have been hacked?

18 A. I have not.

19 Q. Have you looked?

20 A. No. I was looking specifically for
21 Ditech or Green Tree hacking incidents, and there
22 aren't any. Maybe they're better at protecting
23 their data than everyone else is.

24 Q. And, like you said before, you would only
25 be able to find out if the hack was successful,

1 not if there was an attempt, correct?

2 A. Right, yes. The organizations that track
3 that crime track successful incidents of hacking,
4 not attempted hacks.

5 Q. All right. I want to turn back to
6 something we talked about before briefly about if
7 a -- someone who obtained a consumer report, if
8 they could sell that information to third parties,
9 okay. So --

10 A. Well, hold on. You asked about users
11 doing that. There are companies that broker
12 credit reports, but they're not users of credit
13 reports. And so just to make sure we delineate
14 between the two.

15 Q. Yes. So let's start with that, then. So
16 could you explain the difference between a user
17 and companies that do actively sell information to
18 third parties.

19 A. Sure.

20 MS. KAMKA: Object to form.

21 A. So a user of a credit report would be,
22 you know, I think -- I can't remember the bank's
23 name. I think we may have used Wells Fargo. So
24 Wells Fargo pulling my credit report because I
25 went in and applied for a car loan. They are the

1 user of the credit report, okay?

2 Then you have a different category of
3 company referred to as either a reseller or a
4 broker. And there are a good number of them as
5 well that will actually buy information from one,
6 two, or all three of the credit reporting agencies
7 and then turn around and resell that information
8 to other parties. So there are companies like
9 that that do exist.

10 BY MR. KIND:

11 Q. And are they selling -- what's the name
12 of those companies? Do they have a term?

13 A. Well, they're normally called resellers.
14 That's kind of the formal term. And if you
15 read -- in the Fair Credit Reporting Act they
16 actually refer to obligations of resellers. So I
17 think the formal legal term is reseller, but I
18 think the term, the kind of informal term that is
19 thrown around in my world is a broker, a credit
20 report broker.

21 Q. Okay. So for nonbrokers, let's use Wells
22 Fargo. Well Fargo has information of what,
23 millions of people, let's say. And are they able
24 to sell some information to third parties for
25 marketing or for other reasons?

1 MS. KAMKA: Object, calls for
2 speculation, lack of foundation.

3 A. Credit report information or just any
4 information in general?

5 BY MR. KIND:

6 Q. Let's start with general. Do banks
7 generally sell general information to third
8 parties?

9 MS. KAMKA: Same objection.

10 A. Yeah, I believe that financial services
11 companies as long as they have your acknowledgment
12 or permission to do so will share your information
13 with a third party, normally, as you said, for
14 marketing purposes.

15 BY MR. KIND:

16 Q. Would that generally just be name,
17 address, or would it also include recent
18 information from credit reports?

19 MS. KAMKA: Same objection.

20 A. So it definitely would not include credit
21 report information or what some people refer to as
22 regulated data, because Well Fargo is not a credit
23 bureau. So they're not set up to be -- they're
24 not set up to comply with the obligations of a
25 company that actually sells or discloses credit

1 reports. So they can't do that.

2 Q. Okay.

3 A. The resellers --

4 Q. Could they give more general -- go ahead.

5 A. I'm sorry.

6 Q. No, no, you, please.

7 A. I was going to say that these companies
8 that fall under that category of resellers that I
9 was talking about a couple minutes ago, they are
10 set up to comply with their obligations under the
11 FCRA, so they are considered consumer reporting
12 agencies.

13 Q. Okay. Would the regular banks -- so
14 they're not brokers, just regular banks --
15 someone's general information, would they include
16 some in between, so maybe the existence of a
17 bankruptcy, would that be included?

18 A. I don't know. I don't know. I mean,
19 bankruptcy is a public record, so, I mean, I can
20 look up Mr. Kamimura's bankruptcy information if I
21 wanted to. But the answer to your question is I
22 don't know.

23 Q. Okay. So what other kind of information
24 might a mortgage company sell about its consumers
25 to a third party?

1 MS. KAMKA: Objection, lack of
2 foundation, calls for speculation.

3 A. I don't know. I've never worked for a
4 mortgage company, so I don't know what -- or for a
5 lender, so I don't know what they could possibly
6 sell.

7 BY MR. KIND:

8 Q. You spoke before that it costs money for
9 a user to inquire about a credit report, right?

10 A. That's correct.

11 Q. Do you know, how much is it for Ditech to
12 access Mr. Kamimura's consumer report?

13 MS. KAMKA: Objection, lack of
14 foundation, calls for speculation.

15 A. I don't know. I don't know what their
16 price per unit is for account review inquiries or
17 any other type of inquiry, for that matter.

18 BY MR. KIND:

19 Q. But you do know it costs them something.

20 MS. KAMKA: Same objection.

21 A. Yes. The credit bureaus charge for
22 account review runs, yes. There is a cost
23 involved.

24 BY MR. KIND:

25 Q. Is the price listed on the subscriber

1 agreement?

2 MS. KAMKA: Same objection.

3 A. Not necessarily. Sometimes those
4 subscriber agreements will just kind of define the
5 high-end relationship between the parties, and
6 then when the account is -- the account with the
7 user is actually I guess onboarded is the term,
8 then the credit reporting agencies will set the
9 price for certain services or products that are
10 being purchased by the user, and that would
11 obviously depend on the nature of the relationship
12 between the parties.

13 Q. You said the word onboard. Can you tell
14 me what that is?

15 A. Sure, so it's easier for me just to give
16 you an example, if you don't mind. So let's say
17 that I open a car dealership, John opens a car
18 dealership, John's Used Cars, and I want to pull
19 credit reports to see if people who come onto my
20 lot are, you know -- if I can sell a car to them
21 through indirect financing. So I apply for an
22 account with the credit reporting agencies, or one
23 of them, depending on how I want to do it.

24 I fill out an application, and if they
25 approve it then I sign a user agreement, and then

1 when my account goes through the onboarding
2 process, meaning that they actually set up the
3 price tag for the different products and services
4 that I'm going to eventually buy from them, that's
5 generally how the process works, or at least it
6 was when I was working for Equifax.

7 Q. Okay. When you were working at Equifax
8 would Equifax have been okay knowing that one of
9 the users of its information was accessing
10 consumer reports 10 years or 20 years after the
11 consumer's accounts were closed?

12 MS. KAMKA: Object to form, calls for
13 speculation.

14 A. I don't know. I don't know that I ever
15 ran into that issue when I worked there, so I
16 don't know what the company's position on that
17 was.

18 BY MR. KIND:

19 Q. Also, for an account discharged in
20 bankruptcy do you agree that, from everything you
21 reviewed, that account should be reported with a
22 zero balance?

23 MS. KAMKA: Object as outside the scope
24 of this deposition.

25 A. I think you meant debt discharged in a

1 bankruptcy.

2 BY MR. KIND:

3 Q. Yes.

4 A. But yes. The credit report should
5 reflect the accurate status of the account. And
6 if the account has a debt that is zero, because
7 it's been discharged in a bankruptcy and nothing
8 is due and owing, then reporting it with a zero
9 balance would be the appropriate way to report it.

10 Q. Do you happen to know in cases where a
11 furnisher might report a bankruptcy discharge and
12 then later on the balance reappears on the
13 consumer report, have you come across such a
14 scenario?

15 MS. KAMKA: Object to form and calls for
16 speculation.

17 A. I believe I have seen that happen. When
18 you say cases, not cases as in lawsuits where I've
19 been an expert witness cases, but scenarios where
20 I've seen that, yes, because in some scenarios the
21 bankruptcy may not necessarily wipe out the
22 balance to zero, so therefore there is some amount
23 that's still due.

24 Q. Is it possible for a furnisher after
25 reporting -- oh, Mary Kay, are you still there?

1 MS. KAMKA: I can hear audio, but my
2 video is not here.

3 MR. KIND: Do you want to go off the
4 record?

5 MS. KAMKA: You know, I'm okay if my face
6 is not on the screen because I can hear you guys,
7 if you're okay with it.

8 MR. KIND: I'm okay with that.

9 MS. KAMKA: Okay.

10 MR. KIND: John, you're okay with that
11 too?

12 THE WITNESS: Yeah, I'm fine. I'm fine
13 with that too.

14 BY MR. KIND:

15 Q. Okay. So have you ever had the scenario
16 where a furnisher reports a bankruptcy discharge
17 and then the bankruptcy gets reported on the
18 consumer report, but then later this appears and
19 the balance comes back not because it was an issue
20 with the bankruptcy, but either because it was an
21 error on the part of the furnisher or the credit
22 reporting agency?

23 A. I can't think of an example that's that
24 specific, so the answer is no.

25 Q. Is it possible for a furnisher of

1 information to withdraw a reporting of bankruptcy
2 and rereport the balance and take away the
3 bankruptcy status?

4 A. Yes, it is. You mean systemically
5 possible?

6 Q. Yes.

7 A. Yes, the answer to your question is yes.
8 You can do that.

9 Q. All right. So on your opinion number
10 three, third paragraph -- we're back onto your
11 Exhibit 3, so it's your report.

12 A. Okay.

13 Q. In your opinion, your third opinion, you
14 rebut Mr. Hendricks' report by saying that he is
15 factually incorrect. But what we discussed today,
16 it seems that what your opinion is is really an
17 opinion that's an expert opinion, but you didn't
18 really base it on facts, that an account review is
19 still allowed after an account has closed or paid
20 off or discharged in bankruptcy. So is this
21 something that you're going to stand by, that it's
22 factually incorrect, or is it just opposing
23 opinion?

24 MS. KAMKA: I just object to the form of
25 the question.

1 A. When you say third paragraph, are you
2 talking about the rebuttal to the first opinion?

3 Q. Yes.

4 A. Okay. Give me a minute just to read
5 through it again, please.

6 So, yes, this is -- yes. I -- what he's
7 saying is factually incorrect. Bankruptcies do
8 not discharge accounts, they discharge debts. So
9 what he says, I respectfully disagree with what he
10 says, which is that blah, blah, blah, included a
11 discharge for plaintiff's account, and then to
12 continue, blah, blah, blah, because no account
13 relationship existed between plaintiff and
14 defendant. That's -- so my rebuttal was that
15 that's factually inaccurate. Bankruptcies don't
16 discharge accounts, they discharge debts.

17 Q. Understood.

18 A. And I see what Evan is doing, which is
19 fine. He's trying to kind of inject that misuse
20 of the word into his report multiple times, which
21 whatever, it is what it is. It's my job to catch
22 that. And so this is my rebuttal of that.

23 Q. What about a business relationship, as
24 opposed to an account relationship? We didn't
25 really talk about that. What would the business

1 relationship be between Ditech and Mr. Kamimura
2 after the discharge?

3 MS. KAMKA: Object to form, the term
4 business relationship, and calls for a legal
5 conclusion.

6 A. Yeah, I don't know that that was even
7 something I put in my report, but I don't know
8 what the business relationship is, other than the
9 fact that he's a former -- a former borrower who
10 filed bankruptcy and the lien was -- well, I mean
11 the debt was exhaust -- or was discharged in
12 bankruptcy. But as far as the current business
13 relationship, other than the fact that there is a
14 former account, I don't know what the current
15 business relationship would be.

16 BY MR. KIND:

17 Q. Well, I'm asking it at the time right
18 after the bankruptcy, so not right now. But would
19 the business relationship consist of having an
20 account, and that's it? Is that right?

21 MS. KAMKA: Same objection.

22 A. Well, I don't know what Evan meant when
23 he said, Plaintiff did not have an account or a
24 business relationship. I don't know what he means
25 by that. Clearly he and I disagree, and I think

1 you and I respectfully disagree with each other,
2 that the account still existed.

3 As far as the business relationship, I
4 don't know what Evan means when he talks about a
5 business relationship. And I'm pretty sure I
6 don't -- I didn't offer rebuttal to that. I just,
7 again, pointed out that bankruptcies don't
8 eliminate accounts.

9 Q. Okay. Fair enough.

10 What about the relationship? I think we
11 discussed that. Well, let's talk about it for a
12 second, just relationship.

13 The total relationship as you understand
14 it between Ditech and Mr. Kamimura after the
15 discharge, did that consist of just the account
16 and nothing else?

17 MS. KAMKA: Object to form, and calls for
18 a legal conclusion.

19 A. I don't know. I don't -- I don't know
20 what the relationship was other than the fact that
21 he had a HELOC that was being reported by
22 Ditech/Green Tree, so I don't know what happens
23 kind of behind the scenes when the bankruptcy is
24 filed and discharged. That's not really my
25 expertise.

1 Q. From everything that you reviewed so far,
2 there's a relationship of the account, and we got
3 your opinion on that, but you haven't seen
4 anything else in that relationship, correct?

5 MS. KAMKA: Object to form.

6 A. Just what's being reported to the credit
7 report, which is what Evan and I are talking about
8 is the credit reporting aspect of this. This is
9 my knowledge of the relationship between Ditech
10 and Mr. Kamimura is what's spelled out in Exhibit
11 2, which is where their account is listed.

12 Q. You haven't seen any evidence of a second
13 account between Kamimura and Ditech, correct?

14 A. No, sir, I haven't.

15 Q. And you haven't seen any evidence that
16 maybe there was a loan modification or attempted
17 loan modification, correct?

18 A. No, sir, I have not.

19 Q. And so from all the documents that we
20 have, all you've seen is this one account with the
21 credit reporting on it and the discharge, but
22 that's it that we have, just one account. That's
23 the relationship, right?

24 MS. KAMKA: Object to form of the
25 question.

1 A. Yes. Yes, the only nature of the
2 relationship between Mr. Kamimura and Ditech is
3 what -- that I've seen is what is represented on
4 the credit report.

5 MR. KIND: Now, I'm almost done. Mary
6 Kate, is it okay if we take five minutes?

7 MS. KAMKA: Yeah, absolutely.

8 MR. KIND: I just want to look through --
9 let's go off the record.

10 THE VIDEOGRAPHER: The time is 3:54 p.m.
11 We are off the record.

12 (Recess)

13 THE VIDEOGRAPHER: The time is 4:11 p.m.
14 After a short break we're back on the record.

15 BY MR. KIND:

16 Q. Okay. Similar to what you saw with
17 Ditech, do companies generally have policies and
18 procedures in place for the Fair Credit Reporting
19 Act?

20 MS. KAMKA: Object to form, lack of
21 foundation, calls for speculation.

22 A. Sure. I mean, I can answer from the
23 perspective of my expert work. When it's a case
24 where policies and procedures are in question, it
25 almost across-the-board every single company that

1 I've been an expert witness I guess for has had
2 voluminous policies and procedures with respect to
3 credit reporting and, consequently, the Fair
4 Credit Reporting Act compliance.

5 BY MR. KIND:

6 Q. And have you also seen that companies
7 generally have policies and procedures relating to
8 inquiries?

9 MS. KAMKA: Same objection.

10 A. I don't know that I can recall that,
11 so -- just simply because it's such a kind of
12 narrow thin slice of credit reporting. So I just
13 don't recall.

14 BY MR. KIND:

15 Q. Okay. But you -- okay.

16 Other than in this case have you seen
17 other companies that have policies, procedures,
18 relating to -- let me start again, because I want
19 to define a term.

20 Batch credit pulls, or -- what is a batch
21 credit pull or a refresher? Are you familiar with
22 those terms?

23 A. Yeah. Batch or batch refresh, is that
24 what you're talking about?

25 Q. Yes.

1 A. Okay. So that's a credit reporting term,
2 and batch -- they kind of mean the same thing,
3 batch, meaning that they can be used
4 interchangeably.

5 Batch is just simply indicates that the
6 credit reporting agency is delivering information
7 on a large number of consumers in a
8 nontransactional environment, meaning they're not
9 doing it in a one-off scenario where like if you
10 walked into a car dealership and asked for
11 financing, they would just pull a credit report on
12 Michael Kind, versus, you know, Well Fargo, you
13 may have a credit card with them, they may be
14 doing their batch refreshes once a month or once a
15 quarter and they're pulling it on 20 million
16 people.

17 Q. So do companies generally have policies
18 and procedures relating to these batch refreshes?

19 A. Yes, almost always, yes.

20 Q. Have you provided training to companies
21 on batch refreshes?

22 A. When I was at Equifax, yes.

23 Q. And would you charge or Equifax would
24 charge these users for the training?

25 A. No, not specifically for the training.

1 For the actual batch job, yes, but not necessarily
2 for the training.

3 Q. Would the training also include a part
4 that talks about the law and permissible purpose?

5 A. No. That's -- again, that's up to the
6 user to do their due diligence with respect to
7 compliance with the law.

8 Q. And then when you were working for
9 Equifax, Equifax can be concerned with a
10 certification from the user that they had a
11 permissible purpose, is that right?

12 A. As part of the relationship, yes. That
13 was part of the -- what you referred to earlier as
14 a subscriber agreement, where there is
15 acknowledgment that there is an obligation to
16 comply with the Fair Credit Reporting Act, which
17 obviously would include permissible purpose.

18 Q. More than that, Equifax wouldn't go into
19 the user's business of trying to see what exactly
20 the permissible purpose is, correct?

21 A. No, that's not necessarily true. There
22 were limited scenarios where you would ask for
23 evidence of permissible purpose. But by and
24 large, again, that was up to the user to do their
25 due diligence to be compliant.

1 Q. Okay. Are you aware of any companies or
2 organizations that provide training to users of
3 information relating to batch refreshes in
4 connection with the relevant law?

5 A. I am -- I am not. That doesn't mean they
6 don't exist, I'm just not familiar with them with
7 respect to that unique scenario that you just
8 posed.

9 Q. Okay. What about just generally in
10 connection to inquiries? Are there companies out
11 there that provide training for regulations and
12 laws relating to inquiries?

13 A. There are certainly companies that
14 provide Fair Credit Reporting Act compliance
15 training and audits, which would encompass
16 permissible purpose, which is obviously where an
17 inquiry would come from.

18 Q. Okay. Can you name one or two companies,
19 if you can?

20 A. I do it, so my company does it. I'm
21 obviously a small fish, so I don't really consider
22 myself to be a competitor with the other large
23 companies that do it. I know that there are law
24 firms that do it.

25 You know, I found using probably what

1 most people do is just Googling Fair Credit
2 Reporting Act training and compliance and there's
3 a list of companies that advertise -- that buy ad
4 space for those terms.

5 Q. How much would you charge to go into
6 Ditech and give them training on inquiries
7 specifically?

8 A. Just on inquiries?

9 Q. Yeah.

10 A. I don't know that I would -- I would do
11 that. I would almost do it -- I don't know. I
12 don't really offer it on a very specific slice of
13 the FCRA compliance like that. Mine is more of an
14 overall audit, everything that touches credit
15 reporting.

16 Q. How much does that cost, roughly?

17 A. It's -- it can be expensive, because some
18 organizations are massive. You know, a small
19 company, you know, \$10,000. A large company could
20 be considerably more than that.

21 Q. Like 100,000?

22 A. Oh, no, I never -- I've never had
23 anything like that. I've never had anything over
24 20. But, again, if -- you know, Citibank or some
25 other massive global bank needed me to spend

1 essentially a year of my life doing it, then
2 obviously the cost would be considerable.

3 Q. Okay. So a regular training session and
4 audit would be about 10 to 20,000?

5 A. Yeah. That's about right.

6 Q. Okay. All right.

7 Now -- oh, I wanted to ask you, so we're
8 back on your opinion number three on your report.

9 A. Okay.

10 Q. It talks about -- you spoke about how
11 that screen shot that you had from Ditech's
12 policies and procedures, it seems that your
13 opinion is that that relates to batch refreshes as
14 well as individual inquiries; is that correct?

15 A. Yeah. It's in rebuttal to Evan's opinion
16 that they didn't have -- that Ditech didn't have
17 any policies in place to ensure that account
18 reviews of credit reports were not done, I guess,
19 it failed to have a policy. And I was simply
20 identifying that they do, and maybe he just missed
21 it. And so that was the purpose of the screen
22 capture.

23 And this section doesn't necessarily
24 address the method of delivery, whether it's a
25 transactional inquiry versus a batch-related

1 inquiry.

2 Q. Do you remember in reviewing
3 Mr. Hardwick's deposition, he testified that these
4 policies and procedures related to inquiries
5 related only to individual and not to batch
6 inquiries? Do you remember seeing something about
7 that?

8 A. I don't recall. I don't recall seeing
9 that. But, again, that last sentence in the
10 screen capture, just for your -- just FYI,
11 reviewing the account to determine if the customer
12 continues to meet the terms of the account is
13 considered a legitimate business need. That -- if
14 you looked up the garden variety definition of an
15 account review run, that would be the sentence
16 that's in there.

17 So, again, I don't know -- that's just my
18 experience talking there, that that generally
19 would refer to as a batch run for account review.

20 Q. Yeah. So if it turns out true that
21 Mr. Hardwick's position -- so Ditech's position --
22 was that that screen shot refers only to
23 individual inquiries, do you disagree with them?

24 A. No, I don't disagree with Mr. Hardwick.
25 And, again, I don't know that it's important,

1 because Evan just has the opinion that there isn't
2 any policy or procedure at all regarding account
3 reviews of credit reports, and my response is here
4 it -- I mean, this is specific to reviewing of
5 accounts.

6 Q. And if hypothetically, let's say it's
7 true that Ditech's position is that that policy
8 that you're referring to from Ditech's bankruptcy
9 procedures manual, page 5, if it's Ditech's
10 position that that only relates to individual
11 inquiries and not to batch refreshes, do you agree
12 with Evan that Ditech does not have policies and
13 procedures relating to batch refreshes?

14 A. I think the only way I would agree with
15 Evan is if Mr. Hardwick testified, We have no
16 policies regarding batch refreshes, rather than
17 Evan's interpretation of what somebody else may or
18 may not have said and not considering the screen
19 capture that I put.

20 I know he got this afterwards, so in all
21 fairness to him, he may not have even seen it.

22 Q. Evan's report -- and I'm not trying to be
23 argumentative -- his expert report cites the place
24 in the deposition where Mr. Hardwick testified
25 essentially that.

1 If you don't remember that testimony then
2 we can just move on. Do you remember anything
3 about that, Mr. Hardwick talking about whether
4 this policy relates to batch refreshes as opposed
5 to individual?

6 A. I do not.

7 Q. Okay. All right.

8 Now, I want to go back for a second and
9 to -- and give you a hypothetical.

10 A. Okay.

11 Q. Assuming that there's a bankruptcy
12 discharge, there's no lien on the account, Ditech
13 closes the account -- well, let me start again,
14 okay.

15 There's an account with Ditech. It's
16 discharged in bankruptcy and it's a junior lien
17 and it's -- there's no more lien, there's no
18 balance after the discharge.

19 Also assume that there are no additional
20 terms on this account. There's no annual fee,
21 there's no other thing that the consumer has to
22 do. He has a zero balance, he has to pay zero
23 dollars per month, there's nothing left to do on
24 this account.

25 Would you say -- would you agree with me

1 in that scenario that there's no legitimate
2 business need to access the consumer's consumer
3 report?

4 A. No, I wouldn't say there's no legitimate
5 business need. It may be a different business
6 need other than, you know, your stereotypical risk
7 management.

8 But, again, like the one example I was
9 able to give you earlier about addresses, that
10 certainly could still apply. And, again, if a
11 mortgage expert could list off other ones, then it
12 seems like there would be more -- there could be
13 several.

14 Q. All right. As to the hypothetical that
15 the lender, Ditech, does not need the consumer's
16 address for any reason, it doesn't need his phone
17 number and Ditech does not need the consumer's
18 social or any updated information relating to the
19 address, phone number, contact information, at
20 that point would you agree that there's no
21 legitimate business need at that point?

22 MS. KAMKA: I object to the extent it
23 calls for a legal conclusion.

24 A. No. That would just eliminate my one
25 example that I gave you. I don't know that it's

1 fair that that would eliminate every possible
2 example that exists that I just don't know or
3 can't think of.

4 BY MR. KIND:

5 Q. All right. But from all the examples
6 that you can think of today, could you tell me of
7 any legitimate business needs that Ditech had to
8 pull Mr. Cam more a's consumer report?

9 MS. KAMKA: Object to the extent it calls
10 for a legal conclusion, calls for speculation.

11 A. Yeah, again, that's outside of my area of
12 expertise. And so I'm not going to be able to
13 give you a nice elegant list, other than the one
14 that I was able to think of which is you need an
15 address for a refund of escrow funds or need an
16 address because you need to send tax-related
17 documents, for example.

18 BY MR. KIND:

19 Q. Do you believe that there is -- that it
20 is permissible, you know, in terms of the industry
21 that they deem it permissible to pull someone's
22 consumer report because you need their address to
23 send tax documents?

24 MS. KAMKA: Same objection.

25 A. If it -- that seems like a legitimate

1 business reason in my mind, I mean, so that that
2 seems like that would be a pretty garden variety
3 permissible purpose.

4 BY MR. KIND:

5 Q. What happens if the legitimate
6 business -- what happens if the bank wanted to
7 pull the address because -- for statistical
8 reasons, for big picture reasons. They were just
9 trying to compile how many people do we have, do
10 they all live in Las Vegas? Is that a legitimate
11 business need?

12 MS. KAMKA: Same objection.

13 A. I don't know. I don't know if that would
14 fall under a legitimate business need. That's
15 outside of credit reporting, so I don't know if
16 that would be a legitimate business need for a
17 bank. It might be. That seems like a good
18 question for someone from a bank.

19 BY MR. KIND:

20 Q. As far as credit reporting goes, do you
21 see it that the bank needs to have a legitimate
22 business need for each consumer, or can they just
23 have a big picture need and just try to get
24 statistics on everybody that they have to
25 determine, you know, some general stuff? Is that

1 okay to do account review inquiries?

2 MS. KAMKA: Object to form, and calls for
3 a legal conclusion.

4 A. Yeah, I don't -- I don't think so. I
5 mean, if -- the permissible purpose language in
6 the act doesn't have any -- it doesn't qualify by
7 saying, Well, if most of the people have -- you
8 know what I mean? It doesn't necessarily go like
9 that where X percent, but if we throw in these
10 other folks it's okay. It doesn't -- it appears,
11 anyway, in my interpretation of it that if you're
12 going to pull 10 people's credit reports you need
13 to have a permissible purpose for all 10 people.

14 BY MR. KIND:

15 Q. All right. So I just want to wrap up
16 again the idea, the hypothetical before where
17 there's zero balance, there are no additional
18 terms, there's no tax forms, there's no extra
19 money in escrow, and let's say the bank agrees
20 that they don't need the address for any reason.

21 You don't have any reason sitting here
22 today to tell me what a legitimate reason why that
23 company might need to do an account review,
24 correct?

25 MS. KAMKA: Objection, asked and

1 answered.

2 A. Yeah, again, we're just eliminating my
3 one or two examples that I was able to think of.
4 There may be 50 more that I just don't know
5 because I'm not a mortgage expert.

6 But certainly if you -- you just
7 eliminated the -- you know, the two that I had,
8 but there may be more. But we know that the
9 account still exists. And so if there's a
10 legitimate business need, then that would be
11 permissible.

12 Q. Okay. But you don't have any -- you
13 can't tell me any specific ones today other than
14 in the hypothetical I gave you, because I took
15 away all the ones that you had. You don't have
16 any other examples, correct?

17 MS. KAMKA: Objection, asked and
18 answered.

19 A. That's correct, yes, sir. Or no, I
20 don't.

21 BY MR. KIND:

22 Q. All right, okay. So now also I want to
23 ask you something about what you just said, which
24 is that if -- do you have -- do you make a
25 distinction between when an account exists that

1 you're saying that you could do an account review,
2 does it matter if there's a legitimate business
3 need on top of that, or all that they need is to
4 have an account and then they can do an account
5 review?

6 MS. KAMKA: Object to form, it's
7 compound.

8 BY MR. KIND:

9 Q. Yeah. Did you understand the question?
10 Let me --

11 A. Yeah. I'm not sure -- do you mind
12 rephrasing?

13 Q. Yeah. Yeah.

14 You said your opinion is that if an
15 account exists then it's okay to do an account
16 review, correct?

17 A. Correct.

18 Q. Does a user in addition to having an
19 account also need to have a legitimate business
20 need?

21 MS. KAMKA: Object to form.

22 A. If -- I don't know. The legitimate
23 business need could be a second permissible
24 purpose. I don't know the answer to your
25 question.

1 BY MR. KIND:

2 Q. Your opinion in this case is that an
3 account exists after a discharge, correct?

4 A. That's right.

5 Q. But whether or not there's an additional
6 legitimate business need that's required or if the
7 account existing by itself is enough, you're not
8 sure, correct?

9 MS. KAMKA: Objection, I think that
10 misstates his testimony.

11 A. Right, yeah. I didn't go so far to say
12 you have to have -- check these three boxes in
13 order for it to be permissible, so I don't know if
14 there needs to be something on top of the fact
15 that the account still exists.

16 BY MR. KIND:

17 Q. Do you know if just having an account is
18 a permissible purpose as determined by the
19 industry?

20 MS. KAMKA: Object to form, and calls for
21 a legal conclusion.

22 A. No, I mean, the language in the act says
23 that there has to be a legitimate business need.

24 BY MR. KIND:

25 Q. So, yeah. I'm not asking about the

1 legal, I'm asking in your industry, just having an
2 account itself is not enough to be a permissible
3 purpose, correct?

4 MS. KAMKA: Object, vague and ambiguous.

5 A. I don't know if just simply having an
6 account is -- you know, I don't know that that
7 checks the box. I just don't know.

8 BY MR. KIND:

9 Q. But the industry generally does use the
10 term legitimate business need in connection with
11 inquiries, correct?

12 A. Well, the -- the industry doesn't -- the
13 industry defers to the user to determine if they
14 have a legitimate business need. The industry
15 doesn't say, This is what you have to have in
16 order to have a legitimate business need. That's
17 up for the user to determine themselves, whether
18 or not they have a legitimate business need.

19 Q. If you were giving a training right now
20 or if we were using this video as a training for,
21 you know, an upcoming training that you were going
22 to do, would you tell the company that just having
23 an account is good enough, or would you say you
24 need an additional something?

25 A. I wouldn't address that. That's a legal

1 question. I don't address it from that
2 perspective.

3 Q. And then so do you have enough
4 information to form an expert opinion as to
5 whether or not -- as to whether or not a
6 legitimate business need exists just because an
7 account exists?

8 A. No, I'm not giving an opinion on that.

9 Q. And you're also not giving an opinion if
10 a permissible purpose exists just because an
11 account exists, correct?

12 A. Ask that again. Or if you don't mind --
13 or she can read it back, whatever you want to do
14 is fine, I don't care.

15 Q. I can ask it again.

16 A. Okay.

17 Q. Is it true you're not giving an opinion
18 that a permissible purpose exists just because an
19 account exists, correct?

20 A. I'm not giving an opinion one way or the
21 other on that.

22 Q. So correct, right?

23 A. Right, if my answer indicates that you're
24 correct, then that's fine. But I'm not giving an
25 opinion one way or the other on that.

1 Q. Yeah, but are you not giving an opinion
2 on -- are you not responding to my question, or
3 you're not giving an opinion on what I'm asking,
4 which is -- yeah. So it's a little confusing, a
5 little unclear. So let me ask it again.

6 Is it true that you are not giving an
7 opinion one way or the other as to if a
8 permissible purpose exists just because an account
9 exists?

10 A. That's correct. I'm not giving an
11 opinion one way or the other.

12 Q. And what's the reason why you're not
13 giving an opinion on that?

14 A. Because I --

15 MS. KAMKA: Objection, argumentative.

16 A. Because, again, I don't know if just
17 simply having the account is enough or if you have
18 to have an account plus a legitimate business need
19 or if they -- or if having an account is enough
20 and that is the legitimate business need. I just
21 don't know one way or the other, so I can't give
22 you an opinion one way or the other.

23 BY MR. KIND:

24 Q. Yeah. If you had to lean towards one or
25 the other, which way would you lean?

1 MS. KAMKA: Objection.

2 BY MR. KIND:

3 Q. Are you more inclined to say that just an
4 account is not viewed by the industry and users
5 generally to be a permissible purpose? Are you
6 more leaning towards users of information and the
7 industry generally sees an account as enough to do
8 an inquiry?

9 MS. KAMKA: Object to form, objection,
10 asked and answered, and objection, outside the
11 scope of his expert deposition.

12 A. I'm not leaning. There is no variance in
13 which way I'm leaning. I'm not leaning one way or
14 the other.

15 BY MR. KIND:

16 Q. Have you ever seen a consumer report that
17 has a string of multiple chargeoff notations?

18 A. Yes.

19 Q. Do you believe those are accurate under
20 the FCRA?

21 MS. KAMKA: Objection, outside the scope
22 of the deposition.

23 A. Yes, I do believe that's accurate. I've
24 been an expert in countless lawsuits where that's
25 the issue, and they've all been dismissed. So

1 yes, it's accurate reporting.

2 BY MR. KIND:

3 Q. Is that because it's the accurate status
4 for each month?

5 A. Yes.

6 MS. KAMKA: Same objection.

7 BY MR. KIND:

8 Q. You said yes?

9 A. Yes, that's right. As long as it was in
10 a chargeoff status for the month that it was
11 recorded as being a chargeoff, then it's correct
12 reporting.

13 Q. If a consumer continues to make payments
14 on a mortgage and then that -- and then for some
15 reason those monthly payments or the entire
16 account --

17 MS. KAMKA: Hey, Mike?

18 THE WITNESS: Oh, we can't hear him.

19 MS. KAMKA: Can you hear me, John?

20 MR. KIND: I can hear you, but I can't
21 hear Mike.

22 MS. KAMKA: Yeah, the same. I don't know
23 how to get that message to him.

24 THE WITNESS: He knows that we can't hear
25 him.

1 MS. KAMKA: John, can you still see Mike?
2 THE WITNESS: I can still see him, but I
3 know that he can't hear us and we can't hear him.
4 I can't see you any longer.

5 MS. KAMKA: Yeah, my thing just went
6 down.

7 THE WITNESS: Right. We're wasting tape
8 right now.

9 MS. KAMKA: We can go off the record -- I
10 guess we need his permission to go off the record.

11 (Brief recess)

12 BY MR. KIND:

13 Q. All right. Let's continue.

14 So the question I was asking was if
15 someone's making on-time payments for a mortgage
16 every month and then -- or expressed from the
17 credit report?

18 MS. KAMKA: Hey Mike, you kind of went in
19 and out on that question again.

20 MR. KIND: I'll start again.

21 BY MR. KIND:

22 Q. If someone is making on-time payments on
23 a mortgage and then for some reason that account
24 is suppressed or deleted from the credit report,
25 does the credit score change because of that?

1 MS. KAMKA: Objection, outside the scope
2 of this deposition.

3 A. That's a possibility.

4 Q. What would it depend on?

5 MS. KAMKA: Same objection.

6 A. It could depend on the diversity of the
7 information on the consumer's credit report, it
8 can depend on the age of the mortgage loan that is
9 no longer on the credit report.

10 BY MR. KIND:

11 Q. As a general rule would you agree that
12 post -- on-time payments on a consumer report will
13 generally provide a better credit score,
14 generally?

15 MS. KAMKA: Same objection.

16 A. Than what?

17 BY MR. KIND:

18 Q. Than not having those -- not having that
19 account showing those positive reports.

20 A. No, not necessarily. I mean, certainly
21 you'd rather have something good on a credit
22 report than something bad on a credit report. But
23 just simply having something good on a credit
24 report doesn't mean that your score is higher than
25 if it wasn't there.

1 Q. All right. We discussed your three
2 opinions today, and you have a copy of your report
3 in front of you.

4 A. Yes.

5 Q. And do you have any other opinion in this
6 case?

7 A. Not as I -- not as I sit here today.

8 Q. And based on the all --

9 A. Can you repeat that, Mike? I'm sorry.

10 MS. KAMKA: I can't hear Mike as well.
11 Mike, you're just coming in and out.

12 THE WITNESS: Do you mind repeating that?

13 MR. KIND: I'm not going to ask that
14 question, that's okay.

15 BY MR. KIND:

16 Q. Is there anything in your current report
17 in front of you that you would want to change or
18 modify in any way?

19 A. No, not really.

20 Q. You say not really. Is there something
21 maybe, a little?

22 A. No. I mean, to the extent we talked
23 about this, you have economic damages and you
24 brought up the whole issue of well couldn't
25 emotional distress cause economic damages. The

1 only thing I would change is maybe make that a
2 little bit tighter. Maybe do a better job of
3 defining economic damages. But I think the point
4 was made that I'm not offering an opinion
5 regarding emotional distress. But other than
6 that, no.

7 Q. Do you plan to do any further research in
8 this case?

9 A. I don't have any further research
10 planned, so at this point the answer would be no.

11 MR. KIND: Okay. I have no further
12 questions. Mary Kate, did you have some
13 questions?

14 MS. KAMKA: No, we don't have any
15 questions.

16 MR. KIND: Okay. Well, let's get the
17 time on the record so we can properly do that. I
18 think we started at 10 -- so I'm on Pacific time
19 and we started at 10:00 o'clock and now it's 1:50,
20 1:49, so . . . three hours, 50 minutes, is that --
21 do you agree with that?

22 THE WITNESS: That sounds fine. Yeah,
23 that looks like it's right, so we have a counter
24 over here, so that looks like it's right.

25 MR. KIND: Okay. Mary Kate, did you have

1 anything to add on the record?

2 MS. KAMKA: I do not.

3 MR. KIND: All right. Did you want to
4 read and sign, John?

5 MS. KAMKA: Yes, please.

6 MR. KIND: And do you think, either you
7 or Mary Kate, do you think altogether maybe two
8 weeks after receiving the transcripts, should that
9 be enough, do you think?

10 MS. KAMKA: Yeah, I'll defer to John on
11 that if there's any reason he can't meet that
12 deadline, but fine with us.

13 THE WITNESS: No, from my perspective two
14 weeks is fine.

15 MR. KIND: Okay. Well, then in that case
16 I have nothing further, so let's go off the
17 record, if you're good with that, Mary Kate.

18 MS. KAMKA: I agree.

19 THE VIDEOGRAPHER: The time will be 4:49
20 p.m., and this will conclude today's video
21 deposition of Mr. John Ulzheimer.

22 (Deposition concluded at 4:49 p.m.)

23 (Signature reserved)

24

25

1 I declare under penalty of perjury
2 under the laws that the foregoing is
3 true and correct.

4

5 Executed on _____, 20____,
6 at _____, _____.

7

8

9 DEPONENT'S SIGNATURE

10

11

12

13 Sworn to and subscribed before me this ___ day of
14

15 _____, _____.
16

17

18 NOTARY PUBLIC

19 My Commission Expires: _____

20

21

22

23

24

25

1 CERTIFICATE

2 STATE OF GEORGIA:

2 COUNTY OF FULTON:

3 I hereby certify that the foregoing
4 transcript was taken down, as stated in the caption,
5 and the colloquies, questions and answers were
6 reduced to typewriting under my direction; that the
7 transcript is a true and correct record of the
evidence given upon said proceeding.

8 I further certify that I am not a relative
or employee or attorney of any party, nor am I
9 financially interested in the outcome of this
10 action.

11 I have no relationship of interest in this
matter which would disqualify me from maintaining my
12 obligation of impartiality in compliance with the
13 Code of Professional Ethics.

14 I have no direct contract with any party
15 in this action and my compensation is based solely
16 on the terms of my subcontractor agreement.

17 Nothing in the arrangements made for this
proceeding impacts my absolute commitment to serve
18 all parties as an impartial officer of the court.

20 This the 22nd day of February 2018.

23 
24

25 Valerie Almand, CRR, RPR, CRC, B-531